

## **EXHIBIT “F”**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WHITESTONE CONSTRUCTION, CORP., )

Plaintiff, )

vs. ) No. 20-cv-1006

YUANDA USA CORPORATION, )

Defendant. )

The videotaped videoconference deposition of  
JAMES DEARTH, called for examination, taken pursuant to  
the Federal Rules of Civil Procedure of the United States  
District Courts pertaining to the taking of depositions,  
taken before KELLY A. BRICHETTO, CSR No. 84-3252,  
Certified Shorthand Reporter of the State of Illinois, on  
the 20th day of January, 2021, at 10:04 a.m.

REPORTED REMOTELY FROM CHICAGO, ILLINOIS

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7 Suite 3100		7 Exhibit No. 5 (Skipped)	
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<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: Good morning. Today's date  2 is January 20th, 2021. The time on the record is 10:04  3 a.m.  4 This is the videorecorded deposition of  5 James Dearth in reference to Whitestone Construction  6 Corp. versus Yuanda USA Corporation in the United States  7 District Court for the Southern District of New York,  8 case Number 20-cv-1006. This video deposition is taking  9 place remotely.  10 Would all attorneys present please  11 identify themselves and state whom they represent  12 beginning with the party noticing this proceeding.  13 MR. GILL: This is Adam Gill, G-I-L-L,  14 representing the Defendant, Yuanda USA Corporation.  15 MR. CARBONE: This is Donald Carbone with  16 Goetz Fitzpatrick, LLP, and we represent the Plaintiff in  17 the action, Whitestone Construction Corp.  18 THE VIDEOGRAPHER: My name is Adam Nudelman.  19 I'm the videographer with Veritext. The court reporter  20 today is Kelly Kilcoyne, also with Veritext. She will  21 now administer the oath. We can proceed.  22 (Witness sworn.)  23 MR. GILL: Thank you.  24</p>	<p style="text-align: right;">Page 8</p> <p>1 BY MR. GILL:  2 Q. Mr. Dearth, have you ever given a deposition  3 before?  4 A. No.  5 MR. CARBONE: Mr. Gill, just for a moment --  6 and if we didn't sign it -- you're talking about the  7 stipulation and order concerning protocol for conducting  8 remote depositions which is seven pages dated sometime in  9 January 2021?  10 MR. GILL: Correct.  11 MR. CARBONE: Okay. Yes, we agree to that.  12 MR. GILL: Thank you.  13 MR. CARBONE: And, Mr. Gill, with respect to  14 proceeding under the Federal Rules, I just want to be  15 clear. With respect to any objections, that in order to  16 preserve our rights at the time of trial with respect to  17 the objections, all we have to do is object. We do not  18 have to explain the reasons for objections. Do you  19 agree?  20 MR. GILL: I -- if that is what your  21 interpretation of the rules is, then yes.  22 MR. CARBONE: Well, Mr. Gill, it's a question  23 of -- if we're going to proceed, I'd like to proceed on  24 the same page. So that's my interpretation of the rules.</p>
<p style="text-align: right;">Page 7</p> <p>1 WHEREUPON:  2 JAMES DEARTH,  3 called as a witness herein, having been first duly sworn,  4 was examined and testified as follows:  5 DIRECT EXAMINATION  6 BY MR. GILL:  7 Q. Can you state your name and spell your last  8 name for the record, please.  9 A. James Dearth, D-E-A-R-T-H.  10 MR. GILL: For the record, this is the  11 discovery deposition of James Dearth as the corporate  12 representative of Whitestone Construction Company taken  13 pursuant to notice, the Federal Rules of Civil Procedure  14 and all applicable rules.  15 Before I begin, counsel, we are taking  16 this deposition pursuant to a stipulation for conducting  17 remote depositions. Do you agree to the terms in that  18 stipulation?  19 MR. CARBONE: Yes. I believe -- I believe we  20 signed it and returned it.  21 MR. GILL: Okay. Actually, you did not sign  22 and return it. That's why I'm asking you for your  23 agreement on the record.  24</p>	<p style="text-align: right;">Page 9</p> <p>1 If you disagree with me, let me know because rather than  2 object, just saying objection, I'll explain the reasons  3 for my objection which as you know will extend the  4 deposition. So I just need to know whether you agree and  5 you have the same interpretation as I do.  6 MR. GILL: I do. I do have the same  7 interpretation because -- yes, I agree.  8 MR. CARBONE: Okay, great. Thank you.  9 MR. GILL: Thank you.  10 BY MR. GILL:  11 Q. So let me go over some ground rules since you  12 have not given a deposition before. Obviously there's a  13 court reporter here taking down everything you and I say.  14 And even in the best of times when we're in the same  15 room, it's difficult. This is not intended to be a  16 conversation. And for the clarity of what is said and  17 the court reporter's sanity, you -- I ask you please to  18 let me finish a question before you provide -- start an  19 answer, and I will make every effort to not step on your  20 answers. We want to make sure that the record and what  21 you say and what I'm asking are clear so that later when  22 we go back and review this it's understood what the  23 questions and answers were.  24 In the same vain, all of your answers must be</p>

<p style="text-align: right;">Page 10</p> <p>1 verbal. Nods of the head, um-hum, na-huh, things like 2 that are going to make it extremely difficult for the 3 court reporter to take down accurately what we say and 4 for your attorney and me to later understand what exactly 5 the answer was. Is that fair enough? 6 A. Yes. 7 Q. Thank you. 8 If at any time you need to take a break, just 9 let me know, and I only ask that you answer a question 10 that is pending before we take a break. This is not 11 supposed to be a marathon, and the purpose is just to get 12 to the bottom of some of these factual issues. 13 So aside from any discussions with your 14 attorney -- and I certainly don't want any -- to know 15 about any communication you had with the attorney here or 16 any other attorney that has been advising Whitestone, but 17 aside from communications with your attorney have you 18 discussed this deposition with anyone? 19 A. No. 20 Q. Okay. Did you discuss the topics of the 21 deposition with anyone at Whitestone in preparation for 22 this deposition? 23 A. I just told my office that I was gonna be 24 here for the deposition.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And today you are answering questions on 2 behalf of Whitestone not on your own personal knowledge. 3 Do you understand that? 4 A. Yes. 5 Q. At this time if you can open the exhibits. I 6 provided exhibits to Mr. Carbone earlier this week. Can 7 you open up the redwell that contains them? 8 MR. CARBONE: Yeah, Adam, do you want me to 9 open it or do you want him to open it? 10 MR. GILL: I would like it opened on camera. 11 I don't care who opens it. 12 MR. CARBONE: Okay. 13 Here it is. 14 MR. GILL: Thank you. 15 There's two copies. One copy is for the 16 deponent and one is for counsel. 17 THE VIDEOGRAPHER: The video is -- that I am 18 doing is just on the deponent. Is that okay or do you 19 want -- 20 MR. GILL: That's fine. 21 THE VIDEOGRAPHER: -- it on the video? 22 MR. GILL: That's fine. Mr. Carbone is 23 showing me what -- what he has, and it's acceptable. 24 So one copy is for you, Mr. Carbone, and</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. What did you do in preparation for 2 this deposition? 3 A. I met with Mr. Carbone yesterday and I 4 believe it was the Friday before last. 5 Q. Did you review any documents? 6 A. Yes. 7 Q. What documents did you review? 8 A. A number of documents. 9 Q. Okay. What -- including what? 10 A. I'm not sure. If I had a list, I would be 11 able to identify or visually see them, but I don't know 12 off the top of my head. 13 Q. You don't remember any document you reviewed 14 in preparation for this deposition? 15 A. I do remember them. I would just have to 16 visually see them to recall. 17 Q. As you sit here without looking at any 18 documents, you don't recall what documents you reviewed 19 though; is that accurate? 20 A. Yes. 21 Q. Okay. And you understand that Whitestone has 22 designated you as its corporate representative for the 23 purpose of this litigation. Do you understand that? 24 A. Yes.</p>	<p style="text-align: right;">Page 13</p> <p>1 one copy is for the deponent. 2 MR. CARBONE: Do you care which copy, the 3 rubber band or the non-rubber band copy? 4 MR. GILL: Nope. They are identical. 5 MR. CARBONE: Okay. 6 BY MR. GILL: 7 Q. If you can please take a look at the exhibit 8 that's previously been marked as Defendant's Exhibit 1. 9 Have you seen this document before? 10 A. No. No. 11 Q. Okay. For the record, this is a notice of 12 deposition, 30(b)(6) deposition that I provided to 13 counsel for Whitestone on or about -- I don't recall. A 14 couple weeks ago. I can get the exact date later, but 15 you have not seen this document; is that correct? 16 A. No. 17 Q. If you can turn to Page 3 and 4, have you 18 seen this list of topics before? 19 A. No. 20 Q. Are you capable and able to answer questions 21 regarding all the topics listed on Page 3 and 4 of this 22 notice of 30(b)(6) deposition? 23 A. I'm going to list off the ones that I won't 24 be able to.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. Okay.</p> <p>2 A. Three, Page 3, item 3.</p> <p>3 Q. Yep. I understand.</p> <p>4 A. I'll answer to the best of my ability item 4.</p> <p>5 To the best of my ability for 5. To the best of my</p> <p>6 ability for 6. To the best of my ability for 7. Eight</p> <p>7 is fine. I can answer 8.</p> <p>8 Q. Understood. Thank you.</p> <p>9 A. Nine as well. I can answer 9 as well. To</p> <p>10 the best of my ability for 10. I can answer 11. I can</p> <p>11 answer 12. I can answer 13. I can answer 14. I can</p> <p>12 answer 15. I can answer 16. I can answer 16 to the best</p> <p>13 of my ability. I can answer 17 to the best of my</p> <p>14 ability. I can answer 18 to the best of my ability. I</p> <p>15 won't be able to answer 19. I won't be able to answer</p> <p>16 20. I'll be able to answer 21.</p> <p>17 Q. Thank you. Okay. If you can take -- take a</p> <p>18 look at what's been previously marked as Defendant's</p> <p>19 Exhibit 2 which, for the record, is the Complaint filed</p> <p>20 in this litigation on February 6, 2020 in the Southern</p> <p>21 District of New York. It's my understanding that you</p> <p>22 will be able to answer questions as Whitestone's</p> <p>23 designated representative regarding the allegations</p> <p>24 contained in this document; is that accurate?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. When did they both reject that work?</p> <p>2 A. I would need to review the documents. I</p> <p>3 don't know the exact date --</p> <p>4 Q. Okay.</p> <p>5 A. -- offhand.</p> <p>6 Q. Do you know specifically what work they</p> <p>7 rejected?</p> <p>8 A. They rejected the clerestory assembly.</p> <p>9 Q. The entire assembly?</p> <p>10 A. Of the clerestory specifically.</p> <p>11 Q. But the entire assembly of the clerestory?</p> <p>12 A. I'm unsure of how to answer that.</p> <p>13 Q. Well, what did they reject? What did they</p> <p>14 find was not compliant with the contract documents?</p> <p>15 A. Movement criteria between two buildings.</p> <p>16 Q. If you can look at Exhibit 2 again. Read</p> <p>17 paragraph 8 to yourself.</p> <p>18 (Witness peruses document.)</p> <p>19 A. Okay.</p> <p>20 Q. Okay. What does Whitestone mean in this</p> <p>21 allegation when it talks about defective work?</p> <p>22 A. Would you mind rephrasing that question?</p> <p>23 Q. I can't. The second -- the last part of this</p> <p>24 says: "Defendant is contractually obligated to repair or</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes, I will do my best.</p> <p>2 Q. If you turn to Page 2, paragraph number 7,</p> <p>3 allegation 7, can you read that to yourself, please.</p> <p>4 (Witness peruses document.)</p> <p>5 "Has been rejected and declared defective by</p> <p>6 CUCF, as owner, and its general contractor, F.J. Sciamè</p> <p>7 Construction Company, Inc.; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. As far as you know, does Sciamè have a</p> <p>10 contract with Yuanda?</p> <p>11 A. No.</p> <p>12 Q. Who does Sciamè have a contract with?</p> <p>13 A. Whitestone.</p> <p>14 Q. Did both Sciamè and the owner reject</p> <p>15 Whitestone's work?</p> <p>16 A. They rejected Yuanda's work.</p> <p>17 Q. Well, in order to reject Yuanda's work, did</p> <p>18 they have to reject Whitestone's work?</p> <p>19 A. I'm unsure.</p> <p>20 Q. But Yuanda doesn't have a contract with</p> <p>21 Sciamè; is that accurate?</p> <p>22 A. Yes.</p> <p>23 Q. Who rejected the work -- the owner or Sciamè?</p> <p>24 A. Both.</p>	<p style="text-align: right;">Page 17</p> <p>1 replace said defective work." I want to know what</p> <p>2 Whitestone means by defective work.</p> <p>3 A. Defective work is what the owner determines</p> <p>4 is not in compliance with their drawings and</p> <p>5 specifications.</p> <p>6 Q. Does that require that the work actually not</p> <p>7 be in compliance or just determined to be not in</p> <p>8 compliance?</p> <p>9 MR. CARBONE: Objection.</p> <p>10 You can answer.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I'm unsure.</p> <p>13 BY MR. GILL:</p> <p>14 Q. Whitestone doesn't know what it means when it</p> <p>15 wrote defective work in its Complaint; is that your</p> <p>16 answer?</p> <p>17 MR. CARBONE: Objection.</p> <p>18 BY MR. GILL:</p> <p>19 Q. Please answer.</p> <p>20 A. Could you say that one more time, please.</p> <p>21 Q. Does Whitestone know what it meant when it</p> <p>22 stated defective work in paragraph 8 of its Complaint?</p> <p>23 A. Yes.</p> <p>24 Q. What did Whitestone mean?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. That the owner determined that the work was 2 defective. 3 Q. If work is not defective -- or strike that. 4 If work does actually conform or comply to 5 the requirements in the contract documents, is that work 6 required to be replaced or corrected if the owner's 7 wrong? 8 A. Would you mind saying that one more time, I'm 9 sorry, a little bit slower? 10 Q. If work is, in fact, correct in that it 11 complies with the requirements of the contract documents, 12 is Whitestone or Yuanda required to correct or replace it 13 if the owner is wrong in their determination? 14 A. I believe so, yes. 15 Q. And what is that belief based on? 16 A. If the owner or construction manager believes 17 that the work is defective, we need to replace it. We 18 need to bear the sole cost as well. 19 Q. We who? 20 A. Whitestone and its vendors and 21 subcontractors. 22 Q. According to Whitestone, who has the right to 23 determine whether Yuanda's work conforms or does not 24 conform to the project -- the contract documents?</p>	<p style="text-align: right;">Page 20</p> <p>1 (Witness peruses document.) 2 A. Yes. 3 Q. According to this allegation, Whitestone says 4 that Yuanda has failed or refused to correct its 5 defective work; is that accurate? 6 A. Yes. 7 Q. What did Whitestone demand Yuanda do in order 8 to correct this defective work? 9 A. Remediate the clerestory assembly to the 10 satisfaction of the owner. 11 Q. The entire remediation from design through 12 installation, is that your position? 13 A. Yes. 14 Q. What exactly did Yuanda refuse to do? 15 A. They refused to supply the manpower and I 16 believe the material to complete the remediation to the 17 owner's satisfaction. 18 Q. If you'd look at paragraph 12 on Page 3 of 19 Exhibit 2. Please read that to yourself. 20 A. Excuse me. I'm unsure of the material aspect 21 of that last thing I just said. 22 Q. I understand. If you can read paragraph 12 23 to yourself. 24 (Witness peruses document.)</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. CARBONE: Objection. 2 BY MR. GILL: 3 Q. Go ahead and answer. For all of your 4 attorney's objections, you have to answer unless he says 5 it's privileged or there's some other reason why you 6 shouldn't answer. 7 A. I understand. I'm sorry. Would you mind 8 just saying that once again? 9 Q. Yeah. According to Whitestone, who has the 10 right to determine that Whitestone's or Yuanda's work 11 fails to conform with the contract documents? 12 MR. CARBONE: He's already -- you already 13 asked that question. He already answered that question, 14 I believe. 15 MR. GILL: No. You just objected. He did not 16 answer. 17 MR. CARBONE: Okay. 18 BY THE WITNESS: 19 A. I believe it's the owner and their designated 20 design team, the construction manager and Whitestone 21 itself. 22 BY MR. GILL: 23 Q. If you can turn to Page 3 of Exhibit 2 and 24 read paragraph 9 to yourself.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Okay. 2 Q. Does this description and definition of what 3 is defined in here as "work," does that accurately 4 describe Yuanda's scope of work? 5 MR. CARBONE: I'm going to object. Oh, never 6 mind. Objection withdrawn. 7 BY THE WITNESS: 8 A. I believe so. I don't know if it's 9 everything, but I believe so. 10 BY MR. GILL: 11 Q. You understand what I mean by scope of work? 12 A. Yes. 13 Q. What is scope of work? 14 A. What they're contractually obligated to 15 deliver. 16 Q. You see in this that the allegation is that 17 Yuanda was contractually obligated to install the 18 curtainwall system? 19 A. No. 20 Q. You don't see that that's what this says? 21 This states that Yuanda -- or sorry. Yuanda agrees to 22 provide Whitestone with "all curtainwall system design, 23 engineering, structural calculations" and a list of other 24 things, "installation and testing." Do you see that it</p>



<p style="text-align: right;">Page 22</p> <p>1 says Yuanda was required to perform installation?</p> <p>2 A. Yes.</p> <p>3 Q. Is that correct?</p> <p>4 A. Yuanda did not install anything on the</p> <p>5 project.</p> <p>6 Q. Were they required to install anything on the</p> <p>7 project?</p> <p>8 A. I'm not aware of that if they were. I know</p> <p>9 they did not though.</p> <p>10 Q. You're not aware whether they were required</p> <p>11 to under the terms of the purchase order? I'm just</p> <p>12 clarifying.</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. Correct.</p> <p>16 Q. And there will be times where I will repeat</p> <p>17 your statement as just clarification making sure I</p> <p>18 understand what you're saying, so I'm not trying to be</p> <p>19 difficult or trick you. I just want to make sure I</p> <p>20 understand. Is that okay?</p> <p>21 A. Yes.</p> <p>22 Q. Who installed the curtainwall system that</p> <p>23 Yuanda fabricated and delivered?</p> <p>24 A. Metro-Tech Erector's Corp.</p>	<p style="text-align: right;">Page 24</p> <p>1 BY THE WITNESS:</p> <p>2 A. I believe so, yes.</p> <p>3 BY MR. GILL:</p> <p>4 Q. Okay. How did Sciamé inform Whitestone that</p> <p>5 the WT-3 system was non-conforming?</p> <p>6 A. I believe via a letter or e-mail.</p> <p>7 Q. Was that the first time that Sciamé informed</p> <p>8 Whitestone that the WT-3 clerestory was non-conforming?</p> <p>9 MR. CARBONE: I'm going to object. Could you</p> <p>10 just give him a time frame?</p> <p>11 BY MR. GILL:</p> <p>12 Q. I am asking whether the date stated in the</p> <p>13 Complaint, June 29th, is the first time that Sciamé</p> <p>14 informed Whitestone that the WT-3 was non-conforming.</p> <p>15 MR. CARBONE: Okay. Thank you.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't believe that's -- that's true.</p> <p>18 BY MR. GILL:</p> <p>19 Q. Okay. When was the first time that Sciamé</p> <p>20 informed Whitestone that the WT-3 was non-conforming?</p> <p>21 A. That Sciamé informed Whitestone?</p> <p>22 Q. Yes.</p> <p>23 A. Within the two years prior. A year and a</p> <p>24 half, two years prior I would say. And that's Sciamé</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. And was that under a subcontract with</p> <p>2 Whitestone?</p> <p>3 A. Yes.</p> <p>4 Q. If you can look at Page 4 and read paragraph</p> <p>5 17 to yourself.</p> <p>6 (Witness peruses document.)</p> <p>7 A. Okay.</p> <p>8 Q. Okay. According to this, Perkins Eastman,</p> <p>9 the architect, discovered "alleged severe discrepancies</p> <p>10 in the project structures projected movement." Does</p> <p>11 Whitestone agree that there were severe discrepancies in</p> <p>12 the project structures projected movement?</p> <p>13 A. Yes.</p> <p>14 Q. You can turn to the next page. You can read</p> <p>15 paragraph 24 to yourself.</p> <p>16 (Witness peruses document.)</p> <p>17 A. Okay.</p> <p>18 Q. This allegation states that in June 2019</p> <p>19 Whitestone contacted Yuanda and notified Yuanda that the</p> <p>20 general contractor, Sciamé, declared that Yuanda's WT-3</p> <p>21 clerestory was non-conforming. Is that a fair assessment</p> <p>22 of what -- paraphrase of what is stated?</p> <p>23 MR. CARBONE: I'll object.</p> <p>24</p>	<p style="text-align: right;">Page 25</p> <p>1 informing Whitestone.</p> <p>2 Q. Right.</p> <p>3 The second half of this allegation says that</p> <p>4 "Whitestone in turn demanded that Yuanda remediate the</p> <p>5 non-conforming work." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Did Whitestone direct Yuanda to remediate the</p> <p>8 non-conforming work only because Sciamé declared</p> <p>9 Whitestone's work or Yuanda's work to be non-conforming?</p> <p>10 A. Yes.</p> <p>11 Q. How did Yuanda's work fail to conform to the</p> <p>12 requirements of the contract documents?</p> <p>13 A. In the curtainwall specifications, it</p> <p>14 specifies that, in more words or less, that there's two</p> <p>15 buildings and that we need to accommodate the movement</p> <p>16 between the two buildings.</p> <p>17 Q. What specification is that in?</p> <p>18 A. I would need to look at it.</p> <p>19 Q. Is it in the curtainwall specification?</p> <p>20 A. It is, yes, which is -- I'm not too sure of</p> <p>21 the exact number.</p> <p>22 Q. If you could turn to Page 7 of Exhibit 2 and</p> <p>23 read paragraph 37 to yourself.</p> <p>24 (Witness peruses document.)</p>



<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. As of February 6, 2020, how much had</p> <p>3 Whitestone spent to remediate the WT-3 clerestory system?</p> <p>4 MR. CARBONE: Adam, what paragraph are we on?</p> <p>5 Excuse me.</p> <p>6 MR. GILL: Thirty-seven.</p> <p>7 MR. CARBONE: Thank you.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I'm unaware of the exact -- I don't remember</p> <p>10 the exact number, but I did prepare the documents, so</p> <p>11 I -- if I was presented the documents, I'd be able to</p> <p>12 tell you.</p> <p>13 BY MR. GILL:</p> <p>14 Q. In February of last year, 2020, had</p> <p>15 Whitestone incurred any costs to remediate?</p> <p>16 A. It would just be the design costs, the cost</p> <p>17 of us eating the design.</p> <p>18 Q. So as of February 2020, Whitestone had not</p> <p>19 incurred costs of \$500,000; is that accurate?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. If Sciamé determined that Whitestone's --</p> <p>22 Strike that.</p> <p>23 If Sciamé determined that Yuanda's work did</p> <p>24 not conform to the requirements of the contract documents</p>	<p style="text-align: right;">Page 28</p> <p>1 BY THE WITNESS:</p> <p>2 A. I think yes.</p> <p>3 BY MR. GILL:</p> <p>4 Q. How?</p> <p>5 A. We installed -- sorry. Not we. Metro-Tech</p> <p>6 installed the system that Yuanda provided in coordination</p> <p>7 with the documents that Yuanda provided us.</p> <p>8 Q. Was Whitestone responsible to Sciamé for the</p> <p>9 installation of the WT-3 clerestory including the design</p> <p>10 and fabrication?</p> <p>11 A. Yes.</p> <p>12 Q. I want to turn your attention to the state --</p> <p>13 the New York State Complaint filed by Whitestone against</p> <p>14 Sciamé. Are you aware of that litigation?</p> <p>15 A. Yes.</p> <p>16 Q. What project does that relate to?</p> <p>17 MR. CARBONE: Are we talking about Defendant's</p> <p>18 Exhibit 3?</p> <p>19 MR. GILL: Yes.</p> <p>20 MR. CARBONE: Okay.</p> <p>21 MR. GILL: No, we're not talking about it yet,</p> <p>22 but we're talking about that litigation, yes.</p> <p>23 THE WITNESS: Should I go there?</p> <p>24 MR. GILL: Not yet, please.</p>
<p style="text-align: right;">Page 27</p> <p>1 or specifications, does that also mean that Whitestone's</p> <p>2 work did not conform?</p> <p>3 MR. CARBONE: Objection.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Would you mind reading that one more time,</p> <p>6 please. I'm sorry.</p> <p>7 BY MR. GILL:</p> <p>8 Q. If White -- if Sciamé determined that</p> <p>9 Yuanda's work did not conform to the contract documents</p> <p>10 and specifications, does that also mean that Whitestone's</p> <p>11 work does not conform?</p> <p>12 A. I'm unsure.</p> <p>13 Q. Well, Yuanda was performing work for</p> <p>14 Whitestone; correct?</p> <p>15 A. Yuanda provided us the fabricated assembly.</p> <p>16 Q. Right. And that fabricated assembly was</p> <p>17 something that Whitestone agreed to provide to Sciamé;</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Could Yuanda's work be non-conforming or</p> <p>21 defective but Whitestone's work be conforming and</p> <p>22 correct?</p> <p>23 MR. CARBONE: Objection.</p> <p>24</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. GILL:</p> <p>2 Q. I want to know what you know about that and</p> <p>3 what project it relates to.</p> <p>4 A. The CUNY New -- I am aware of it, and it was</p> <p>5 for the CUNY New Academic Building project.</p> <p>6 Q. The project that we're talking about today?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Are you familiar with the allegation</p> <p>9 that Whitestone made against Sciamé?</p> <p>10 A. Yes.</p> <p>11 Q. And you're able to answer questions about the</p> <p>12 allegations contained in that Complaint --</p> <p>13 MR. CARBONE: Objection.</p> <p>14 BY MR. GILL:</p> <p>15 Q. -- as -- as Whitestone's designated</p> <p>16 representative?</p> <p>17 MR. CARBONE: Objection. He's being produced</p> <p>18 as a representative for this deposition in connection</p> <p>19 with the Southern District action.</p> <p>20 MR. GILL: I understand.</p> <p>21 MR. CARBONE: He's not being produced as a</p> <p>22 representative with respect to a state court action.</p> <p>23 MR. GILL: I understand, but the rider</p> <p>24 specifically says in point 2, Page 3 of Exhibit 1</p>

<p style="text-align: right;">Page 30</p> <p>1 allegations Whitestone made against Sciamé. There was no  2 objection raised prior to the deposition. It is a proper  3 line of questions, so unless you're going to direct the  4 witness not to answer, I'm going to proceed.  5 MR. CARBONE: I am not going to direct the  6 witness not to answer. I think the -- pursuing that line  7 of questioning is improper. It's not relevant to this  8 lawsuit. However, you could ask him any questions you  9 want, and he'll answer them to the best of his ability.  10 MR. GILL: Okay.  11 BY MR. GILL:  12 Q. If you can look at Exhibit 3, have you seen  13 that document before?  14 A. I believe so, yes.  15 Q. If you can turn to Page 2 of Exhibit 3,  16 paragraph 9 relates to -- it says that Whitestone  17 proposed a number of change orders to address -- it's at  18 the bottom of Page 2 --  19 MR. CARBONE: Two of twelve?  20 MR. GILL: Sorry. Three of twelve. It's  21 number 2 of the actual Complaint, 3 of 12. Thank you for  22 the clarification.  23 THE WITNESS: Where would you like me to look?  24</p>	<p style="text-align: right;">Page 32</p> <p>1 between the -- the academic building and the auditorium.  2 Q. Who was responsible for providing Whitestone  3 with that information?  4 A. I'm unsure, but I believe it's Sciamé, but  5 it's originated by someone else.  6 Q. It wasn't Yuanda? Yuanda was not responsible  7 for generating that information; is that correct?  8 A. Specific to the building movements --  9 Q. Yes.  10 A. -- no.  11 Q. Okay.  12 I'm sorry. Madam Court Reporter, there was  13 a -- I jumped in too quickly. Was that okay? Did you --  14 I just want to make sure that I'm not stepping on  15 anyone's --  16 THE REPORTER: It was fine, but, yeah, you did  17 kinda step on him. I got it though.  18 BY MR. GILL:  19 Q. Paragraph 11 on Page 4 of 12, please. States  20 that: "Whitestone performed all work in accordance with  21 the terms of the contract and has complied with all  22 obligations contained therein." Is that an accurate  23 statement?  24 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 BY MR. GILL:  2 Q. Allegation 9 at the very bottom. "Whitestone  3 proposed a number of change orders to address," and then  4 there's a bunch of listed items. Flip to the next page,  5 iv. "Exchanges which were needed to correct  6 architectural and engineering errors and/or omissions in  7 the plans and specifications of the project." Do you see  8 that?  9 A. Yes.  10 MR. CARBONE: Could you just tell me where we  11 are? My apologies.  12 MR. GILL: Not a problem. We're in the  13 Complaint Page 2 and 3. Of the document it's Page 3 of  14 12 and 4 of 12.  15 MR. CARBONE: Okay. I'm on Page 2 and 3 of  16 12. Okay. Thank you.  17 BY MR. GILL:  18 Q. Does that reference to changes which were  19 needed to correct architectural and engineering errors  20 relate to any work related to the WT-3 clerestory system?  21 A. Yes.  22 Q. What were the errors and omissions in the  23 architect's and engineer's drawings?  24 A. The omission of critical movement criteria</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Does that statement include the  2 installation -- providing an installation of the WT-3  3 clerestory?  4 A. Yes.  5 Q. If you can turn to Page 10 of the exhibit, 10  6 of 12, paragraph 58.  7 A. Yes.  8 Q. You could read that to yourself.  9 (Witness peruses document.)  10 In part -- Whitestone alleges in part in this  11 allegation that Sciamé failed to approve and/or  12 improperly rejected the change orders without providing  13 sufficient basis for same under the contract? Does that  14 allegation include the rejection of Change Order Number  15 98, proposed Change Order Number 98?  16 MR. CARBONE: Objection.  17 BY THE WITNESS:  18 A. Give me one second.  19 BY MR. GILL:  20 Q. Yep.  21 (Witness peruses document.)  22 A. Sciamé provided us with what they believe is  23 a sufficient basis. They provided us with a letter that  24 rejected this work, and they have their reasons listed on</p>

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1 that.

2 Q. I understand. I'm asking about Whitestone's

3 position and allegations. In this allegation, Whitestone

4 has stated that Sciamé failed to provide -- Strike that.

5 Has failed to approve and/or improperly rejected the

6 change order. I want to know what change orders

7 Whitestone's referring to and if that includes any change

8 order related to the WT-3 clerestory.

9 A. Yes.

10 MR. CARBONE: Objection.

11 THE WITNESS: Sorry.

12 MR. GILL: Did you get that, Madam Court

13 Reporter?

14 THE REPORTER: I did.

15 MR. GILL: Thank you.

16 BY MR. GILL:

17 Q. And just for clarification, yes, this

18 allegation regarding change order does include change

19 orders related to the WT-3 clerestory?

20 A. Yes.

21 Q. Okay. I want to turn your attention to the

22 purchase order or Whitestone's purchase orders in general

23 before looking at the purchase order specific to this

24 project. Are you able to discuss Whitestone's purchase

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1 orders?

2 A. No.

3 Q. Are you able to answer questions regarding

4 the terms and conditions in the agreement -- in the

5 purchase order between Sciamé and Whitestone? Sorry.

6 Strike that.

7 Are you able to address the terms and

8 conditions in the purchase order between Sciamé and

9 Yuanda?

10 A. No.

11 MR. CARBONE: Objection.

12 MR. GILL: What's the objection?

13 MR. CARBONE: I'm sorry. What's the

14 objection?

15 MR. GILL: Yeah.

16 MR. CARBONE: Documents speak for itself.

17 It's crystal clear.

18 MR. GILL: I'm still entitled to ask the

19 corporate representative about the purchase order. So,

20 counsel, for the record, why did Whitestone offer a

21 corporate representative who cannot address that topic?

22 MR. CARBONE: With respect to the topics that

23 are listed, this corporate representative for the

24 purposes of this deposition could answer the bulk of your

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1 questions.

2 MR. GILL: That was not what was represented

3 to me. What was represented to me as late as last

4 Thursday and as early as November was that Mr. Dearth was

5 going to answer all of the questions or was capable as

6 the corporate representative of answering the questions

7 that are listed in the topics for deposition that are

8 attached to the notice of deposition. So I want to know

9 why Whitestone failed to disclose or failed to prepare

10 this witness to answer these questions.

11 MR. CARBONE: Well, first of all, I'm not

12 going to get into a belabored argument with you with

13 respect to whether or not this witness is a proper

14 representative or not. As you -- as you're well aware,

15 sometimes when you have a deposition you will have

16 multiple witnesses who could answer all the questions

17 that are, you know, listed in -- in your proposed list of

18 questions. This witness is the one who is most capable

19 in the opinion of Whitestone vis-a-vis the technical

20 aspects of the suit which are really the crux of the

21 matter between the clients. Okay. With respect to -- if

22 you want to ask him questions, you want to show him the

23 purchase order and ask him about it, you're free to do

24 that. Okay.

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1 But we did not intentionally as you're

2 inferring produce a witness could not answer the bulk of

3 your questions. And I also understand that Mr. Kushner's

4 made representations to you that to the extent there's

5 any questions that this witness cannot answer that are

6 legitimate questions and are questions that go to the

7 gravamen of the dispute between the parties, we would

8 produce another witness. So you could go forward if you

9 wish.

10 MR. GILL: I will go forward, but you

11 understand what you just said are not the rules of the

12 Federal -- the Federal Rules of Civil Procedure. You

13 have to disclose witnesses prior to the deposition and

14 the topics on which they will provide testimony. And

15 prior to today I was told only that Mr. Dearth would

16 provide testimony on all of the topics, so I was not told

17 he would provide answers to the bulk of the topics or on

18 which topics he would provide answers. I was told he was

19 the representative.

20 And so to in some way lay this at my feet

21 and say I have to come back in a later deposition, this

22 is my one chance and you know under the Federal Rules to

23 take a deposition of the corporate representative, and I

24 get to take the deposition based on the topics I believe

<p style="text-align: right;">Page 38</p> <p>1 are pertinent and material not on the topics you believe</p> <p>2 are pertinent and material, and I believe the purchase</p> <p>3 order is pertinent and material, and it was disclosed.</p> <p>4 That's my --</p> <p>5 MR. CARBONE: I'm not -- you know but you're</p> <p>6 belaboring your point. You're being argumentative for no</p> <p>7 particular reason.</p> <p>8 I think that I've seen a number of e-mails</p> <p>9 that have gone back and forth and letters that have gone</p> <p>10 back and forth between you and Mr. Kushner of my office</p> <p>11 indicating that if there were any questions that this</p> <p>12 witness could not answer we would produce another</p> <p>13 witness. Okay.</p> <p>14 So if you want to ask him questions about</p> <p>15 the purchase order -- all you did is you referred to the</p> <p>16 purchase order. You didn't show it to him. If you want</p> <p>17 to show it to him, you want to ask him questions about it</p> <p>18 that are pertinent to the dispute between the parties,</p> <p>19 you're entitled to do that. And I am not disputing that</p> <p>20 you're entitled to depose a corporate representative or</p> <p>21 representatives that could answer all of the relevant</p> <p>22 questions that you may have.</p> <p>23 BY MR. GILL:</p> <p>24 Q. Does Whitestone have a standard form purchase</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. GILL:</p> <p>2 Q. Did -- in 2013 did Whitestone have a standard</p> <p>3 purchase agreement terms and conditions?</p> <p>4 MR. CARBONE: Objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Not that I would be made privy to. I -- I</p> <p>7 don't know.</p> <p>8 BY MR. GILL:</p> <p>9 Q. You can take a look at Exhibit 4.</p> <p>10 A. Okay.</p> <p>11 Q. Describe -- and Exhibit 4, for the record, is</p> <p>12 the Whitestone Construction Corporation purchase order</p> <p>13 13-0139-002. Can you describe the negotiations between</p> <p>14 Whitestone and Yuanda for this purchase order?</p> <p>15 A. No.</p> <p>16 Q. Do you know how Whitestone and Yuanda came to</p> <p>17 an agreement on the terms included in this purchase</p> <p>18 order?</p> <p>19 A. No.</p> <p>20 Q. Do you know if there were any negotiations</p> <p>21 regarding the purchase agreement terms and conditions</p> <p>22 which begin on Page 3 of this exhibit?</p> <p>23 A. No.</p> <p>24 Q. Do you recognize this document that's</p>
<p style="text-align: right;">Page 39</p> <p>1 order for the purchase of curtainwall system?</p> <p>2 MR. CARBONE: You're not talking about this</p> <p>3 case? You're just talking about in general just to be</p> <p>4 clear?</p> <p>5 MR. GILL: Correct. I did not say regarding</p> <p>6 this matter or this purchase order.</p> <p>7 BY MR. GILL:</p> <p>8 Q. Does Whitestone have a standard form purchase</p> <p>9 order for the purchase of curtainwall system?</p> <p>10 MR. CARBONE: Objection.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I'm unaware.</p> <p>13 BY MR. GILL:</p> <p>14 Q. You are unaware of whether they do or do not;</p> <p>15 correct?</p> <p>16 A. I'm unaware whether they do or do not. I</p> <p>17 don't know if they have a standard form.</p> <p>18 Q. Does Whitestone have a standard terms and</p> <p>19 conditions -- Strike that.</p> <p>20 Does Whitestone have a standard "purchase</p> <p>21 agreement terms and conditions" for its purchase orders?</p> <p>22 MR. CARBONE: Objection.</p> <p>23 BY THE WITNESS:</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 Exhibit 4?</p> <p>2 A. One more time, please.</p> <p>3 Q. Do you recognize this exhibit or this</p> <p>4 document that is Exhibit 4?</p> <p>5 A. Yes.</p> <p>6 Q. If you turn to the second page, at the bottom</p> <p>7 in the middle do you recognize that signature?</p> <p>8 A. I recognize one signature.</p> <p>9 Q. Whose signature is that?</p> <p>10 A. Steven Grzic.</p> <p>11 Q. And, for the record, Grzic is spelled</p> <p>12 G-R-Z-I-C.</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if Whitestone and Yuanda</p> <p>15 negotiated any part of this purchase order?</p> <p>16 A. Please repeat yourself.</p> <p>17 Q. Do you know if Yuanda and Whitestone</p> <p>18 negotiated any parts of this purchase order?</p> <p>19 A. I'm unaware of any negotiation.</p> <p>20 Q. Turn to Page 3 of the exhibit. Are these</p> <p>21 Whitestone standard form terms and conditions as they</p> <p>22 existed in 2013?</p> <p>23 A. Did you say standard from 2013?</p> <p>24 Q. Correct.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. I -- I wouldn't know.</p> <p>2 Q. If you could turn to the first page of this</p> <p>3 exhibit, do you see in that middle paragraph where Yuanda</p> <p>4 is listed as the "vendor"?</p> <p>5 MR. CARBONE: Which paragraph are you in,</p> <p>6 Adam?</p> <p>7 MR. GILL: The large one in the middle. It</p> <p>8 starts "Yuanda USA Corporation."</p> <p>9 BY THE WITNESS:</p> <p>10 A. I see it.</p> <p>11 MR. CARBONE: Okay. They're also noted as</p> <p>12 vendor up on top as well.</p> <p>13 MR. GILL: Correct.</p> <p>14 BY MR. GILL:</p> <p>15 Q. And in this purchase order agreement</p> <p>16 Whitestone is referred to as the subcontractor?</p> <p>17 A. It appears that way, yes.</p> <p>18 Q. Read to yourself the first half of that big</p> <p>19 paragraph there where -- go down to where it says</p> <p>20 "vendor's work."</p> <p>21 (Witness peruses document.)</p> <p>22 A. Okay.</p> <p>23 Q. As far as Whitestone is aware or concerned,</p> <p>24 does that accurately state the work that Yuanda was</p>	<p style="text-align: right;">Page 44</p> <p>1 installation. Was Yuanda required to provide any</p> <p>2 installation for the WT-3 clerestory?</p> <p>3 A. No.</p> <p>4 Q. Was Yuanda required to pay Whitestone or</p> <p>5 Metro-Tech for those installation services?</p> <p>6 MR. CARBONE: Objection.</p> <p>7 BY MR. GILL:</p> <p>8 Q. Please answer.</p> <p>9 A. I don't believe so, no.</p> <p>10 Q. Was Yuanda required to provide any equipment</p> <p>11 that was necessary to install the curtainwall system?</p> <p>12 MR. CARBONE: Objection. And the reason --</p> <p>13 Adam, the reason why I'm objecting -- I'm not trying to</p> <p>14 be obstructionist to your deposition, but the reason why</p> <p>15 I'm objecting is you're talking about the initial work</p> <p>16 versus the remedial work.</p> <p>17 MR. GILL: I'm not talking about work itself.</p> <p>18 I'm talking about what's required -- Strike that. I'm</p> <p>19 not talking about work itself. I'm talking about what</p> <p>20 Whitestone understood the purchase order required. I'm</p> <p>21 not asking for legal conclusion, and I'm assuming that's</p> <p>22 what the objection was, about a legal conclusion. I want</p> <p>23 to know what Whitestone believed under the terms of the</p> <p>24 purchase order Yuanda was required to provide.</p>
<p style="text-align: right;">Page 43</p> <p>1 required to provide for this project?</p> <p>2 A. I don't think I'm qualified to answer that</p> <p>3 question. I don't know what the rest of this document</p> <p>4 says. I don't know if it overrides anything in this</p> <p>5 paragraph.</p> <p>6 Q. I don't know if Yuanda was supposed to</p> <p>7 provide anything other than what's described in there and</p> <p>8 defined as vendor's work.</p> <p>9 MR. CARBONE: Objection. Are you summarizing</p> <p>10 what he testified to? I'm not sure what your last</p> <p>11 statement was. That's what I'm saying.</p> <p>12 MR. GILL: I was summarizing what I think he</p> <p>13 said.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I just don't know if anything in the back --</p> <p>16 beyond this paragraph supersedes anything in that</p> <p>17 paragraph. I'm not qualified to interpret it nor have I</p> <p>18 seen it. I've seen the physical document. I haven't</p> <p>19 actually read anything in it. I don't --</p> <p>20 BY MR. GILL:</p> <p>21 Q. Was Yuanda required to provide any on-site</p> <p>22 services for this project?</p> <p>23 A. I don't believe so.</p> <p>24 Q. You said that Metro-Tech did the</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. CARBONE: And that's the -- that's the</p> <p>2 reason why I objected -- because there's two different</p> <p>3 phases. There's the original, initial phase of the work,</p> <p>4 and then there's the remedial work, and there's a</p> <p>5 separate criteria vis-a-vis the remedial work.</p> <p>6 MR. GILL: That's an interesting</p> <p>7 interpretation.</p> <p>8 BY MR. GILL:</p> <p>9 Q. So back to my question. Was Yuanda required</p> <p>10 to provide any equipment for the installation of the</p> <p>11 curtainwall system?</p> <p>12 MR. CARBONE: Objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I don't know.</p> <p>15 BY MR. GILL:</p> <p>16 Q. If you could turn to Page 3 of the exhibit</p> <p>17 which is Page 1 of the purchase agreement terms and</p> <p>18 conditions. You can look at Article 1 and read the last</p> <p>19 sentence to yourself.</p> <p>20 (Witness peruses document.)</p> <p>21 A. Okay.</p> <p>22 Q. What does that mean to Whitestone? And I'm</p> <p>23 not asking for a legal interpretation. I want to know</p> <p>24 what Whitestone -- how it interpreted that sentence.</p>



<p style="text-align: right;">Page 46</p> <p>1 MR. CARBONE: And you're talking about the</p> <p>2 sentence that begins with the word: "No changes"?</p> <p>3 MR. GILL: Correct.</p> <p>4 MR. CARBONE: Okay.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't know how to interpret that sentence.</p> <p>7 BY MR. GILL:</p> <p>8 Q. Is it a change to the requirements of the</p> <p>9 purchase order if Whitestone provides Yuanda with new</p> <p>10 information that is not contained in the contract</p> <p>11 documents?</p> <p>12 A. I don't know.</p> <p>13 Q. What additional information would you need in</p> <p>14 order to answer that question?</p> <p>15 A. I would need to know how to interpret the</p> <p>16 language.</p> <p>17 Q. If the architect provides new design</p> <p>18 criteria, is that a change to the purchase order</p> <p>19 requirements?</p> <p>20 MR. CARBONE: Objection.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't know.</p> <p>23 BY MR. GILL:</p> <p>24 Q. If you can turn to I believe it's the sixth</p>	<p style="text-align: right;">Page 48</p> <p>1 BY THE WITNESS:</p> <p>2 A. Can you repeat that one more time?</p> <p>3 BY MR. GILL:</p> <p>4 Q. Is it Whitestone's interpretation of that</p> <p>5 requirement that someone other than Whitestone may reject</p> <p>6 Yuanda's work?</p> <p>7 A. Yes.</p> <p>8 Q. Where do you get that interpretation or why</p> <p>9 do you come to that conclusion?</p> <p>10 MR. CARBONE: Objection.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Let me have a minute to think.</p> <p>13 BY MR. GILL:</p> <p>14 Q. Absolutely.</p> <p>15 (Brief pause.)</p> <p>16 A. I'm not entirely sure how to interpret the</p> <p>17 last sentence but I believe the answer's --</p> <p>18 Q. The last sentence where? I'm sorry. The</p> <p>19 last sentence where?</p> <p>20 A. I'm sorry. In the inspection and defective</p> <p>21 work logs I guess, the last sentence. Possibly. I don't</p> <p>22 really know how to interpret that but --</p> <p>23 Q. The last sentence which is on --</p> <p>24 A. 106 right above paragraph 11. It looks like</p>
<p style="text-align: right;">Page 47</p> <p>1 page of the exhibit. It's Article 10 of the purchase</p> <p>2 order terms and conditions.</p> <p>3 MR. CARBONE: You have Bates stamped copies;</p> <p>4 right? Because mine are Bates stamped that you provided.</p> <p>5 MR. GILL: Oh, yes, yes, I do. I actually did</p> <p>6 not have a Bates stamp in front of me. I had marked up</p> <p>7 mine before getting the Bates stamped copies.</p> <p>8 So for the record -- for the record --</p> <p>9 MR. CARBONE: It would be easier if you refer</p> <p>10 to Bates stamps.</p> <p>11 MR. GILL: Understood. For the record, it's</p> <p>12 WCC1105.</p> <p>13 BY MR. GILL:</p> <p>14 Q. And you see at the bottom under inspection</p> <p>15 and defective work there is a sentence that says -- I</p> <p>16 believe it's the second sentence in that subparagraph.</p> <p>17 It says -- it starts: "Vendor shall promptly prepare the</p> <p>18 plan for the approval of the subcontractor in order to</p> <p>19 replace or correct any vendor's work which subcontractor</p> <p>20 shall reject." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is it Whitestone's interpretation that</p> <p>23 someone other than Whitestone may reject Yuanda's work?</p> <p>24 MR. CARBONE: Objection.</p>	<p style="text-align: right;">Page 49</p> <p>1 there's a -- maybe a strike through through it.</p> <p>2 Q. So the -- it's Whitestone's position possibly</p> <p>3 that the sentence that's been stricken through and</p> <p>4 deleted provides -- may provide authority to others to</p> <p>5 reject the work?</p> <p>6 MR. CARBONE: Objection to the form and also</p> <p>7 objection.</p> <p>8 BY MR. GILL:</p> <p>9 Q. I just want to understand if that was your</p> <p>10 testimony, Mr. Dearth. I'm not -- certainly not trying</p> <p>11 to mischaracterize or --</p> <p>12 A. Understand. And I don't know if I'm correct</p> <p>13 in that to be honest with you. I have never reviewed</p> <p>14 this document. I would need to review it to make a</p> <p>15 determination to be honest with you.</p> <p>16 Q. Okay.</p> <p>17 A. I should not have made a shot in the dark</p> <p>18 like that.</p> <p>19 Q. That's fine.</p> <p>20 A. I apologize.</p> <p>21 Q. We will -- we will move on from the terms and</p> <p>22 conditions, but if you can turn to Attachment A, 11.10.</p> <p>23 A. Yes.</p> <p>24 Q. What is Attachment A?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. At the top it reads: "Scope Worksheet</p> <p>2 Attachment A."</p> <p>3 Q. What is it? What does that mean?</p> <p>4 A. It appears to be a scope checklist that</p> <p>5 specifies what's Yuanda -- what's by Yuanda and not by</p> <p>6 Yuanda and/or Whitestone.</p> <p>7 Q. This list -- the scope of work is</p> <p>8 requirements that Yuanda is responsible for providing to</p> <p>9 comply with the requirements of the purchase order; is</p> <p>10 that an accurate statement?</p> <p>11 MR. CARBONE: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. It appears to be. I don't know if any other</p> <p>14 section of this purchase order would supersede any of it</p> <p>15 or add or remove anything.</p> <p>16 BY MR. GILL:</p> <p>17 Q. My -- the intent of my question was not</p> <p>18 saying that this was the -- the limits of their scope of</p> <p>19 work but this is -- this -- this helps define the scope</p> <p>20 of work; is that an accurate statement?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Item 1, line item 1 lists plans and</p> <p>23 then it lists three specification sections. Why are</p> <p>24 those three listed?</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. GILL:</p> <p>2 Q. Okay. And since Yuanda wasn't responsible</p> <p>3 for cast in place concrete or structural steel those were</p> <p>4 not listed, those are omitted from this list; correct?</p> <p>5 MR. CARBONE: Objection.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't know if that's necessary --</p> <p>8 necessarily the case.</p> <p>9 BY MR. GILL:</p> <p>10 Q. Okay. Is it Whitestone's testimony or</p> <p>11 position that Yuanda could have been responsible for work</p> <p>12 described in specifications that are not listed in</p> <p>13 Attachment A?</p> <p>14 MR. CARBONE: Objection.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I'm sorry. Can you say it one more time?</p> <p>17 BY MR. GILL:</p> <p>18 Q. Is it Whitestone's position that Yuanda could</p> <p>19 have been responsible for work described in specification</p> <p>20 sections that are not listed in Attachment A?</p> <p>21 A. Yes.</p> <p>22 Q. How would Whitestone -- how would Yuanda know</p> <p>23 that it was responsible for that work?</p> <p>24 A. I need a minute to think about my answer.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I believe they're listed because this is what</p> <p>2 we want Yuanda to provide service for.</p> <p>3 Q. If a specification is not listed, is Yuanda</p> <p>4 responsible or not responsible for that work?</p> <p>5 MR. CARBONE: Objection.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I'm unsure.</p> <p>8 BY MR. GILL:</p> <p>9 Q. Let me withdraw the -- let me withdraw and</p> <p>10 ask it a different way that might be easier.</p> <p>11 A. Okay.</p> <p>12 Q. There are specifications for steel structure,</p> <p>13 concrete, drywall, all -- all kinds of building</p> <p>14 components; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And they all have different numbers?</p> <p>17 A. Yes.</p> <p>18 Q. And if Yuanda were responsible for cast in</p> <p>19 place concrete or structural steel, those specification</p> <p>20 numbers would have been listed in this document; correct?</p> <p>21 MR. CARBONE: Objection.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Yes.</p> <p>24</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Absolutely.</p> <p>2 (Brief pause)</p> <p>3 A. I believe that the work outlined in the plans</p> <p>4 and specifications that are listed here, they also</p> <p>5 reference related spec sections that are interrelated</p> <p>6 with their work, so they would be responsible with</p> <p>7 complying with those other contract documents.</p> <p>8 Q. The specification sections listed here,</p> <p>9 084413 and 084426, relate to structural glass curtainwall</p> <p>10 systems and aluminum curtainwall systems; is that</p> <p>11 correct?</p> <p>12 A. I believe so, yes.</p> <p>13 Q. And those two specifications also reference</p> <p>14 structural steel and cast in place concrete as may have</p> <p>15 impact on the curtainwall system; correct?</p> <p>16 A. They may. I would need to review the</p> <p>17 documents to --</p> <p>18 Q. Okay. And if they do refer to cast in place</p> <p>19 concrete or structural steel, was Yuanda responsible for</p> <p>20 the proper installation of cast in place concrete and</p> <p>21 structural steel?</p> <p>22 MR. CARBONE: Objection.</p> <p>23 BY THE WITNESS:</p> <p>24 A. No.</p>



<p style="text-align: right;">Page 54</p> <p>1 BY MR. GILL:</p> <p>2 Q. So going back to your prior answer, how would</p> <p>3 you want to know what specification sections it was</p> <p>4 responsible for complying with if they are not listed in</p> <p>5 Attachment A?</p> <p>6 MR. CARBONE: Objection. I believe he already</p> <p>7 answered that question but . . .</p> <p>8 MR. GILL: He did, and I pointed out that</p> <p>9 those specifications refer to things that Yuanda was not</p> <p>10 responsible for. I want to know how Yuanda knew what it</p> <p>11 was responsible for.</p> <p>12 MR. CARBONE: Objection. Again, he's already</p> <p>13 answered that question.</p> <p>14 BY MR. GILL:</p> <p>15 Q. Please answer.</p> <p>16 A. As I said before, there are plans and</p> <p>17 specifications that list related specifications and work</p> <p>18 assemblies that are listed in the plans and</p> <p>19 specifications that were provided to Yuanda, so that's</p> <p>20 how they would know.</p> <p>21 Q. How would Yuanda know which related sections</p> <p>22 it was responsible for versus those it was not</p> <p>23 responsible for?</p> <p>24 MR. CARBONE: Objection.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. CARBONE: Objection. He never mentioned</p> <p>2 roof deflection earlier today, but you can go on.</p> <p>3 MR. GILL: Okay. I -- I stand corrected.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Yes.</p> <p>6 BY MR. GILL:</p> <p>7 Q. What is Whitestone's understanding of what</p> <p>8 roof deflection means?</p> <p>9 A. The amount the roof deflects.</p> <p>10 Q. You mentioned -- you did testify earlier that</p> <p>11 the specification sections -- Whitestone believes that</p> <p>12 the specification discloses differential building</p> <p>13 movement. Is that relatively accurate?</p> <p>14 A. Yes.</p> <p>15 Q. And are those the specification sections</p> <p>16 listed in Attachment A?</p> <p>17 A. I'm unsure how to answer that. It is noted</p> <p>18 in the specs which is noted on this.</p> <p>19 Q. Okay. Where is it noted in the specs?</p> <p>20 Strictly talking about the movement of two separate</p> <p>21 buildings, where is that noted?</p> <p>22 A. I would need the document. Then I could tell</p> <p>23 you where.</p> <p>24 Q. Okay. In what section? Is it in the</p>
<p style="text-align: right;">Page 55</p> <p>1 BY THE WITNESS:</p> <p>2 A. Other than they're referenced in the spec</p> <p>3 section. I don't know.</p> <p>4 BY MR. GILL:</p> <p>5 Q. Did Whitestone provide Yuanda with design</p> <p>6 criteria for the WT-3 clerestory?</p> <p>7 A. I'm unaware. Other than -- are you talking</p> <p>8 in the beginning of the project? I'm sorry.</p> <p>9 Q. I'm talking about related to the documents</p> <p>10 that are listed in Attachment A of the purchase orders.</p> <p>11 Were there the design criteria listed in any of these</p> <p>12 documents or that were provided at the time or as a</p> <p>13 requirement under the purchase orders?</p> <p>14 MR. CARBONE: Objection.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I don't know.</p> <p>17 BY MR. GILL:</p> <p>18 Q. You mentioned a couple of times, I think you</p> <p>19 mentioned a couple of times, roof deflection or the</p> <p>20 building movement, and my understanding, correct me if</p> <p>21 I'm wrong, that the dispute between Whitestone and Sciamme</p> <p>22 and the dispute between Whitestone and Yuanda relates to</p> <p>23 roof deflection and the WT-3 Clerestory's ability to</p> <p>24 accommodate for it; is that accurate?</p>	<p style="text-align: right;">Page 57</p> <p>1 curtainwall section or is it --</p> <p>2 A. Yes.</p> <p>3 Q. -- in a different section?</p> <p>4 A. Yes, it's in the curtainwall section.</p> <p>5 Q. Okay. Does the curtainwall section of the</p> <p>6 specifications identify the amount of roof deflection</p> <p>7 that Yuanda or Whitestone should accommodate for?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you know -- does Whitestone know what the</p> <p>10 identified or the specified amount of roof deflection was</p> <p>11 when it received the contract documents from Sciamme?</p> <p>12 A. Yes.</p> <p>13 Q. What was that roof deflection?</p> <p>14 A. It would be noted on drawing S003.</p> <p>15 Q. So if the roof deflection were not noted</p> <p>16 on -- Strike that.</p> <p>17 If you can turn to, still in Exhibit 4, if</p> <p>18 you can turn to Page 1114.</p> <p>19 A. Yes.</p> <p>20 Q. What is this Attachment B?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know who drafted this?</p> <p>23 A. No, I do not.</p> <p>24 Q. Are you able to answer questions as the</p>

<p style="text-align: right;">Page 58</p> <p>1 Whitestone designated representative regarding the terms  2 and conditions of the contract between Sciamme and  3 Whitestone?  4 A. No.  5 Q. Do you understand what the term warranty work  6 means in the construction industry?  7 A. Yes.  8 Q. What does it mean?  9 A. An extended period of time when the work  10 that's installed or provided would be covered under  11 warranty, for lack of a better word, a guarantee of the  12 craftsmanship and quality of the material for a period of  13 time.  14 Q. If a contractor's required to perform  15 warranty work, is it paid for performing that warranty  16 work?  17 MR. CARBONE: Objection.  18 BY THE WITNESS:  19 A. I believe it would depend on the agreement.  20 BY MR. GILL:  21 Q. Does warranty work -- does warranty work --  22 Strike that.  23 Is warranty work required to correct  24 defective work that was originally installed by the</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Do you have an approximate date?  2 A. I would say between the middle of 2016 and  3 '17.  4 Q. So mid 2016? Summer of 2016?  5 A. I would say so, but I don't have exact dates.  6 Q. When was installation complete?  7 A. The latter half of 2017, I believe.  8 Q. I think you might be off a year. I think the  9 documentation's saying it was done in December 2016. Is  10 that accurate?  11 MR. CARBONE: If you want to show him -- I  12 would ask you to show him the documents to refresh his  13 recollection.  14 BY MR. GILL:  15 Q. Does Whitestone have daily logs of when it  16 performed its work?  17 A. Yes, but I don't have them.  18 Q. Okay. Why weren't they produced?  19 A. Is that a question to me?  20 Q. Yeah. Why did Whitestone not produce the  21 daily logs for the installation of the WT-3 clerestory?  22 MR. CARBONE: Well, I think that's really a  23 more appropriate question with respect to -- for the  24 attorneys to answer.</p>
<p style="text-align: right;">Page 59</p> <p>1 contractor?  2 MR. CARBONE: Objection.  3 BY THE WITNESS:  4 A. I believe it would depend on the agreement.  5 MR. GILL: For the record, we're going to skip  6 Exhibit 5.  7 We've been going for about an hour and 15  8 minutes. Do you want a break, Mr. Dearth, or do you want  9 to continue?  10 THE WITNESS: May I have a little break,  11 please.  12 MR. GILL: Yeah. Five minutes is fine.  13 THE WITNESS: Okay. Thank you.  14 MR. GILL: Thank you.  15 MR. CARBONE: Put it on mute. Put yours on  16 mute.  17 THE VIDEOGRAPHER: Off the record, 11:22.  18 (WHEREUPON, a break was  19 taken.)  20 We are back on the record, 11:28.  21 BY MR. GILL:  22 Q. When did Whitestone begin installation of the  23 WT-3 clerestory?  24 A. I don't have an exact date.</p>	<p style="text-align: right;">Page 61</p> <p>1 To the extent you requested document  2 production, it's my understanding in communication with  3 Mr. Kushner and Mr. Rodriguez any documents you requested  4 were, in fact, produced. I don't know if you asked for  5 daily logs, and quite frankly, I can't answer -- tell you  6 whether or not daily logs were, in fact, produced. If  7 you're telling me they were not for the purposes of this  8 dialogue, I will certainly take your word for it.  9 MR. GILL: I am telling you they were not  10 produced, and they were requested.  11 MR. CARBONE: Okay. I'm sorry?  12 MR. GILL: And they were requested too.  13 BY MR. GILL:  14 Q. Was there any e-mail communication during  15 either -- Strike that.  16 Did Whitestone have any e-mail communication  17 either with Yuanda, Sciamme or internally during the  18 installation of the WT-3 clerestory?  19 A. Yes.  20 Q. Is there a reason why those documents weren't  21 produced?  22 MR. CARBONE: I have the same response. To  23 the extent you made the proper request for documents,  24 it's my understanding that they were produced by</p>

<p style="text-align: right;">Page 62</p> <p>1 Mr. Kushner and Mr. Rodriguez.</p> <p>2 MR. GILL: I've been demanding since the</p> <p>3 middle of October that those documents be produced, and</p> <p>4 Mr. Kushner has refused to produce them.</p> <p>5 MR. CARBONE: I'm sure he has a good reason.</p> <p>6 BY MR. GILL:</p> <p>7 Q. Did Whitestone encounter any issues or</p> <p>8 problems during the installation of the WT-3 clerestory?</p> <p>9 A. Is it specifically relating to something --</p> <p>10 Q. No.</p> <p>11 A. -- or just overall?</p> <p>12 Q. Yeah. Were there issues? Were there</p> <p>13 problems?</p> <p>14 A. Yes.</p> <p>15 Q. Did you encounter -- okay. What were some of</p> <p>16 the problems? Strike that.</p> <p>17 Were there problems with the material that</p> <p>18 Yuanda provided or the details that Yuanda provided?</p> <p>19 MR. CARBONE: Just give a time frame, please.</p> <p>20 BY MR. GILL:</p> <p>21 Q. During the installation of the WT-3</p> <p>22 clerestory.</p> <p>23 A. And would you mind just saying that one more</p> <p>24 time, please.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. We modified the assembly per the details that</p> <p>2 Yuanda gave us.</p> <p>3 Q. As of -- pardon me.</p> <p>4 (Brief pause.)</p> <p>5 Sorry. I had to reclose my door. I</p> <p>6 accidentally left it open.</p> <p>7 So as of the date that Yuanda -- Strike that.</p> <p>8 As of the date that Whitestone completed</p> <p>9 installation, original installation of the clerestory,</p> <p>10 did Yuanda's design conform to the requirements of the</p> <p>11 purchase order?</p> <p>12 MR. CARBONE: Objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I'm unsure how to answer that question.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Why are you unsure?</p> <p>17 A. From the brief review that we did this</p> <p>18 morning of the purchase order, I'm unaware if there is</p> <p>19 any other stipulations in the con -- in the purchase</p> <p>20 order that would say that the owner could make a</p> <p>21 determination if something was not in compliance.</p> <p>22 Q. Did Whitestone believe that Yuanda -- that</p> <p>23 Yuanda's design to the clerestory conformed to the</p> <p>24 requirements as of the date Whitestone completed</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Yes. During the installation of the WT-3</p> <p>2 clerestory, did Whitestone or its subcontractor encounter</p> <p>3 any problems with the installation of that clerestory</p> <p>4 that are specific to the materials Yuanda provided or the</p> <p>5 details Yuanda provided?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What were the problems specific to the</p> <p>8 materials provided or the details provided?</p> <p>9 A. There's the base condition where -- the</p> <p>10 clerestory sits on the curb. There was an edge distance</p> <p>11 issue with the fastener as detailed, so we had to consult</p> <p>12 Yuanda and get an alternate detail.</p> <p>13 Q. Okay. That goes to my next question. There</p> <p>14 was an NCR which is a non-conformity report; right?</p> <p>15 A. Yes.</p> <p>16 Q. And there was an NCR regarding that sill</p> <p>17 detail; right?</p> <p>18 A. Yes.</p> <p>19 Q. Did Yuanda design all the clips, brackets,</p> <p>20 shims, in-beds, anchors for the WT-3 clerestory?</p> <p>21 A. Yes.</p> <p>22 Q. Did Whitestone field modify any of the clips,</p> <p>23 angles, brackets, miscellaneous metals that Yuanda</p> <p>24 supplied?</p>	<p style="text-align: right;">Page 65</p> <p>1 installation?</p> <p>2 MR. CARBONE: Could you just read that back</p> <p>3 for me, please. I'm sorry.</p> <p>4 (Requested portion of the</p> <p>5 record read.)</p> <p>6 Object to form. You could answer.</p> <p>7 BY THE WITNESS:</p> <p>8 A. It conformed with the documents that Yuanda</p> <p>9 provided.</p> <p>10 BY MR. GILL:</p> <p>11 Q. The design specifically is what I'm talking</p> <p>12 about.</p> <p>13 A. It conformed with the documents that Yuanda</p> <p>14 provided.</p> <p>15 Q. Did they conform to the requirements of the</p> <p>16 purchase order?</p> <p>17 MR. CARBONE: Objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I don't know.</p> <p>20 BY MR. GILL:</p> <p>21 Q. You don't know if Whitestone had an opinion</p> <p>22 about Yuanda's design at the time that Whitestone</p> <p>23 installed it?</p> <p>24 A. The opinion is that it conformed with the</p>

<p style="text-align: right;">Page 66</p> <p>1 documents that Yuanda provided.</p> <p>2 Q. Not the documents Yuanda provided. Did</p> <p>3 Yuanda's design conform to the purchase orders? Did</p> <p>4 Whitestone have that opinion?</p> <p>5 MR. CARBONE: Objection.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I believe so, yes.</p> <p>8 BY MR. GILL:</p> <p>9 Q. Just to clarify, the yes is they had an</p> <p>10 opinion and that opinion was that it did -- the design</p> <p>11 did conform to the purchase order?</p> <p>12 A. I'd like to add on to the end of that if I</p> <p>13 could.</p> <p>14 Q. Sure. Sure. Absolutely.</p> <p>15 A. I apologize for not knowing this better, but</p> <p>16 somewhere within this document it specifies that the</p> <p>17 owner can reject the work. So in the terms they conform</p> <p>18 with the purchase order, I just don't know if I could</p> <p>19 accurately answer that because if it's something that it</p> <p>20 was determined after the work was installed, there might</p> <p>21 be something in here that says that it doesn't conform</p> <p>22 with the PO.</p> <p>23 Q. And, for the record, in here in this</p> <p>24 document, you're referring to Exhibit --</p>	<p style="text-align: right;">Page 68</p> <p>1 page listing it as I believe Exhibit 5 to a filing by</p> <p>2 Whitestone.</p> <p>3 Did Whitestone receive a copy of this, a</p> <p>4 clean copy of this at the time it was issued?</p> <p>5 A. Yes.</p> <p>6 Q. Was this RFI when it was originally issued</p> <p>7 result in internal communication between or within</p> <p>8 Whitestone regarding the contents of this?</p> <p>9 A. Could you repeat that?</p> <p>10 Q. Actually, I will withdraw and ask a different</p> <p>11 question.</p> <p>12 At any time did Whitestone have internal</p> <p>13 e-mail communication regarding the RFI or the RFI</p> <p>14 response?</p> <p>15 A. I don't remember.</p> <p>16 Q. Okay. Were there any meetings at Whitestone</p> <p>17 to discuss the RFI or the RFI response?</p> <p>18 A. Yes.</p> <p>19 Q. Were there any notes of those meetings?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. Who was present during those meetings?</p> <p>22 A. Definitely myself and Philip Carvelas, also</p> <p>23 Pawel Lepkowski, and I believe that's it. That's all I</p> <p>24 can remember at this time.</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I'm sorry. Four.</p> <p>2 Q. Got it. I'm not asking about whether the</p> <p>3 owner can reject later and what the ramifications of that</p> <p>4 are. I'm asking about what Whitestone believed at the</p> <p>5 time that Whitestone finished installing the clerestory.</p> <p>6 Did Whitestone believe that the design conformed to their</p> <p>7 purchase order?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. When Whitestone was done installing</p> <p>10 the clerestory, did Whitestone believe that the</p> <p>11 components that Yuanda fabricated and delivered conformed</p> <p>12 to the purchase order?</p> <p>13 MR. CARBONE: Objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Other than the alternate detail at the base</p> <p>16 of the clerestory, yes.</p> <p>17 BY MR. GILL:</p> <p>18 Q. If you can look at Exhibit 6. Do you</p> <p>19 recognize this document?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. For the record, this is titled "RFI</p> <p>22 Transmittal." This is a document that was filed on ACF's</p> <p>23 system as document 7 -- or 75-5. It contains Pages 2</p> <p>24 through 9 of that exhibit. Page 1 was simply the cover</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. Who is Philip Carvelas just for the</p> <p>2 record?</p> <p>3 A. Yeah, he's the project executive.</p> <p>4 Q. Okay. And Pawel Lepkowski you said?</p> <p>5 A. Was co-project manager with myself.</p> <p>6 MR. CARBONE: Just for clarification, his</p> <p>7 name's spelled P-A-W-E-L as opposed to P-A-U-L?</p> <p>8 THE WITNESS: Yeah --</p> <p>9 MR. CARBONE: Okay.</p> <p>10 THE WITNESS: -- P-A-W-E-L.</p> <p>11 BY MR. GILL:</p> <p>12 Q. And, for the record, what is an RFI?</p> <p>13 A. A request for information.</p> <p>14 Q. In your experience, who issues the RFI?</p> <p>15 A. The entity that has the specific question.</p> <p>16 Q. And in this, it's Dan Dillon. Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. And do you know who Dan Dillon is?</p> <p>20 A. Yes.</p> <p>21 Q. What was his role on the project?</p> <p>22 A. Senior project -- senior project manager.</p> <p>23 Q. For who?</p> <p>24 A. Scieme.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. So Sciame is the one who issued this RFI, and</p> <p>2 it appears it's issued to Perkins Eastman; is that</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you know who Dan Grimaldi is?</p> <p>6 A. No.</p> <p>7 Q. Do you know who Juan Mejia is, M-E-J-I-A?</p> <p>8 A. Yes.</p> <p>9 Q. Who is Juan?</p> <p>10 A. He is a member of the design team.</p> <p>11 Q. Do you know who Mindy No is?</p> <p>12 A. Yes.</p> <p>13 Q. Who is Mindy No?</p> <p>14 A. She is the lead architect.</p> <p>15 Q. Do you know who wrote the information in the</p> <p>16 question portion of this RFI?</p> <p>17 A. Yes.</p> <p>18 Q. Who?</p> <p>19 A. Dan Dillon.</p> <p>20 Q. How do you know that Dan Dillon wrote this?</p> <p>21 A. Well, I just know. I know he did.</p> <p>22 Q. Have you talked to Dan about this?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Okay. Did he say he wrote this?</p>	<p style="text-align: right;">Page 72</p> <p>1 auditorium roof.</p> <p>2 BY MR. GILL:</p> <p>3 Q. I couldn't hear you. Your papers were in</p> <p>4 front of your face.</p> <p>5 A. I'm sorry.</p> <p>6 Q. Not a problem.</p> <p>7 A. This RFI describes the movement criteria of</p> <p>8 the auditorium roof.</p> <p>9 Q. I understand. Actually, the RFI is simply</p> <p>10 the first few pages; correct? The remaining pages are</p> <p>11 the response; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Does the RFI as posed by Dan Dillon on</p> <p>14 January 23rd, 2017 question the adequacy of the -- of</p> <p>15 Yuanda's design to accommodate building movement?</p> <p>16 MR. CARBONE: Objection.</p> <p>17 BY THE WITNESS:</p> <p>18 A. It appears that way.</p> <p>19 BY MR. GILL:</p> <p>20 Q. Where does it say that Yuanda -- that Sciame</p> <p>21 is questioning the adequacy of Yuanda's design?</p> <p>22 A. On the first page --</p> <p>23 Q. Yeah.</p> <p>24 A. -- of the RFI.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Possibly. I know he wrote it.</p> <p>2 Q. What is the purpose of this RFI?</p> <p>3 And, for the record, this is RFI 1130. We're</p> <p>4 going to be referring to that number frequently, I think.</p> <p>5 A. The purpose of the RFI is to close out an</p> <p>6 issue brought up on superstructures report I believe it</p> <p>7 was 8404, I believe.</p> <p>8 Q. Where does it say anything about</p> <p>9 superstructures report in 8404?</p> <p>10 (Witness peruses document.)</p> <p>11 A. It doesn't appear to say it on this.</p> <p>12 Q. How do you know this relates to 8404 then?</p> <p>13 A. In the question section, it says in reviewing</p> <p>14 Submittal 084426-007-01. That could possibly be the</p> <p>15 submittal the RFI was incorporated into. It could</p> <p>16 possibly be. I -- I just don't know.</p> <p>17 Q. Okay. In multiple court filings Whitestone</p> <p>18 has stated that this RFI questions the adequacy of the</p> <p>19 WT-3 clerestory as designed by Yuanda to accommodate</p> <p>20 building movement. Is that what this RFI does? Does it</p> <p>21 question the adequacy by Yuanda's design?</p> <p>22 MR. CARBONE: Objection.</p> <p>23 BY THE WITNESS:</p> <p>24 A. This RFI specifies movement criteria on the</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Yeah.</p> <p>2 A. Bullet point Number 2.</p> <p>3 Q. That's not part of the RFI. That's part of</p> <p>4 the response; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Dan Dillon's question is: "Please</p> <p>7 define what the relative movement between the auditorium</p> <p>8 roof and the main building is per design;" is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. That's not questioning Yuanda's design</p> <p>12 at that point; correct?</p> <p>13 MR. CARBONE: Objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. The original question on the RFI does not,</p> <p>16 but by inference, my interpretation of the response does.</p> <p>17 BY MR. GILL:</p> <p>18 Q. Who wrote that response?</p> <p>19 A. I'm not sure if it was a single person or a</p> <p>20 collaborative effort between the design team, but we</p> <p>21 refer to all responses. They come from the design team.</p> <p>22 Q. Okay. Who was that?</p> <p>23 A. Perkins Eastman in coordination with WSP and</p> <p>24 most likely ALT which is the facade consultant.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. Who is WSP?</p> <p>2 A. WSP is the engineer of record for the</p> <p>3 building.</p> <p>4 Q. Does Whitestone know if the statements</p> <p>5 included in that yellow box on the first page are</p> <p>6 accurate?</p> <p>7 A. Some, yes.</p> <p>8 Q. Which ones does Whitestone know to be</p> <p>9 accurate?</p> <p>10 A. Item 1 appears to be accurate, and number 4</p> <p>11 appears to be accurate.</p> <p>12 Q. Whitestone doesn't know if statements in 2</p> <p>13 and 3 are accurate or not?</p> <p>14 (Witness peruses document.)</p> <p>15 A. I'm definitely not sure if number 3 is</p> <p>16 accurate.</p> <p>17 Q. What about number 2?</p> <p>18 (Witness peruses document.)</p> <p>19 A. Yes, it's accurate.</p> <p>20 Q. What concerns, looking at Item 2, staying</p> <p>21 with Item 2, what concerns did Perkins Eastman previously</p> <p>22 note in Submittal 084413-020-01 and 084413-020-02?</p> <p>23 A. They questioned the ability of the head</p> <p>24 anchor, its ability to accommodate the roof deflections.</p>	<p style="text-align: right;">Page 76</p> <p>1 submittals.</p> <p>2 MR. GILL: Yeah.</p> <p>3 MR. CARBONE: So if they had any comments with</p> <p>4 respect to the second submittal, they couldn't have been</p> <p>5 addressed by the second submittal.</p> <p>6 MR. GILL: I -- I absolutely understand. I'm</p> <p>7 going step by step.</p> <p>8 BY MR. GILL:</p> <p>9 Q. After Perkins Eastman returned Submittal 1</p> <p>10 with comments, were those comments on Submittal Revision</p> <p>11 1, revise and resubmit, were those addressed -- did</p> <p>12 Yuanda address those in their second submission?</p> <p>13 MR. CARBONE: Okay. Object. Objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I believe so.</p> <p>16 BY MR. GILL:</p> <p>17 Q. Prior to submitting those revised shop</p> <p>18 drawings did Whitestone review the changes Yuanda made</p> <p>19 with respect to the WT-3 clerestory?</p> <p>20 A. Yes. It would be, I wouldn't say an</p> <p>21 exhaustive review but yes, a brief review.</p> <p>22 Q. Did Whitestone believe that Yuanda properly</p> <p>23 addressed Perkins Eastman's concerns on that second</p> <p>24 submittal?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Do you know whether Perkins Eastman provided</p> <p>2 what its -- when its -- Strike that.</p> <p>3 Those concerns or those comments were</p> <p>4 returned on -- Strike that.</p> <p>5 I want to avoid going through the whole</p> <p>6 submittal process. I understand the submittal process,</p> <p>7 and I know you do.</p> <p>8 So the comments from the architect were</p> <p>9 returned after the first version submitted by Yuanda for</p> <p>10 the WT-3 clerestory; right?</p> <p>11 A. Yes.</p> <p>12 Q. And according to Perkins Eastman, it had</p> <p>13 comments or concerns regarding building movement;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did Yuanda address those comments and</p> <p>17 concerns when it submitted the second version of those</p> <p>18 shop drawings?</p> <p>19 MR. CARBONE: Objection to form, and I'll be</p> <p>20 happy to explain it to you, Adam. I'm not trying to</p> <p>21 obstruct you.</p> <p>22 MR. GILL: Okay. Go ahead. Yeah, I</p> <p>23 understand.</p> <p>24 MR. CARBONE: Okay. There were two</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall whether Perkins Eastman's</p> <p>3 review of the second submittal contained the same</p> <p>4 comments or concerns?</p> <p>5 MR. CARBONE: As the first submittal?</p> <p>6 BY MR. GILL:</p> <p>7 Q. As the first submittal with respect to the</p> <p>8 WT-3 clerestory.</p> <p>9 A. Yes.</p> <p>10 Q. All the same comments and concerns were</p> <p>11 there?</p> <p>12 A. They were similar in nature.</p> <p>13 Q. But the second submittal was approved with</p> <p>14 comments noted; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And what does that mean to Whitestone that</p> <p>17 they were -- the submittal was returned as with comments,</p> <p>18 approved with comments?</p> <p>19 A. The specific language is in the</p> <p>20 specifications, but my interpretation is that it's okay</p> <p>21 to proceed with fabrication so long as you address the</p> <p>22 minor comments.</p> <p>23 Q. Okay. Looking back at Exhibit 6, the third</p> <p>24 page of the exhibit listed as Page 4 of 9 at the top, do</p>



<p style="text-align: right;">Page 78</p> <p>1 you know what this page represents?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. This is the estimated roof deflections of the</p> <p>5 auditorium building.</p> <p>6 Q. What -- who wrote the notes in the yellow</p> <p>7 boxes?</p> <p>8 A. The design team.</p> <p>9 Q. Whose handwritten notes are those? And I</p> <p>10 mean specific person.</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. What information is included in that</p> <p>13 largest handwritten box kind of in the lower right</p> <p>14 quadrant?</p> <p>15 A. The maximum deflections alone, D.</p> <p>16 MR. CARBONE: Could I -- could I just ask the</p> <p>17 witness because my copy is not the clearest copy, could</p> <p>18 you read what's there?</p> <p>19 And with your permission, I have a blown</p> <p>20 up copy of that page that I could show you, but I can't</p> <p>21 really make out anything in that -- that larger --</p> <p>22 largest box.</p> <p>23 MR. GILL: I understand. I mean that was part</p> <p>24 of the copying process, so I understand. Yeah, I'm --</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. Do you know if that information is</p> <p>2 correct and accurate as it's stated in this RFI response?</p> <p>3 A. No.</p> <p>4 Q. Did Whitestone, Whitestone itself do anything</p> <p>5 to confirm whether that information was correct?</p> <p>6 A. I recall asking if it's correct.</p> <p>7 Q. Who did you ask?</p> <p>8 A. I can't remember if it was members of the</p> <p>9 design team or Sciamé, but I know I asked a couple times.</p> <p>10 Q. Whitestone didn't do an independent</p> <p>11 confirmation with its own engineers or find an engineer</p> <p>12 to confirm it?</p> <p>13 A. No.</p> <p>14 Q. And, for the record, it states, that box</p> <p>15 states that the delta total is 3.4 inches. Do you know</p> <p>16 what that means?</p> <p>17 A. Yes.</p> <p>18 Q. What is it?</p> <p>19 A. The deflection of the auditorium roof will</p> <p>20 deflect downwards 3.4 inches total.</p> <p>21 Q. Do you have any idea how Perkins Eastman or</p> <p>22 its engineers calculated that?</p> <p>23 A. No idea.</p> <p>24 Q. Do you know if the information used to</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. CARBONE: I'm not complaining. I'm not</p> <p>2 complaining about the copying process. I'm just</p> <p>3 suggesting to you if it's important that we be able to</p> <p>4 read it I believe I have a blown up page we might be able</p> <p>5 to use. That's all.</p> <p>6 MR. GILL: I'm not going to have him read all</p> <p>7 of the handwritten notes, but please provide him with the</p> <p>8 larger version. I'm fine with that.</p> <p>9 MR. CARBONE: Okay. Give me a second. I</p> <p>10 think I have it.</p> <p>11 (Brief pause.)</p> <p>12 Okay. I don't have a larger page, but I</p> <p>13 have one that's much, much clearer, so I'm going to give</p> <p>14 that -- I'm going to give that to the witness with your</p> <p>15 permission.</p> <p>16 MR. GILL: That's fine. Yes, you have my</p> <p>17 permission.</p> <p>18 MR. CARBONE: Here you go.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 BY MR. GILL:</p> <p>21 Q. Okay. And I believe you answered my question</p> <p>22 which was that information in the -- that box provides</p> <p>23 the maximum deflection along column line B?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 calculate that was in the contract documents as they</p> <p>2 existed on December 31st, 2016?</p> <p>3 MR. CARBONE: Objection. Which contract are</p> <p>4 you talking about?</p> <p>5 MR. GILL: I'm talking about the contract</p> <p>6 documents.</p> <p>7 MR. CARBONE: Meaning contract documents of</p> <p>8 the purchase order or the contract documents between</p> <p>9 Sciamé and Whitestone? You referred to both earlier.</p> <p>10 MR. GILL: I am referring to the drawings, the</p> <p>11 architectural, structural, architectural drawings,</p> <p>12 structural drawings and the technical specifications.</p> <p>13 MR. CARBONE: That are part of the purchase</p> <p>14 order?</p> <p>15 MR. GILL: Okay. Let me withdraw the</p> <p>16 question.</p> <p>17 BY MR. GILL:</p> <p>18 Q. Are the architectural drawings and the</p> <p>19 structural drawings and the technical specifications that</p> <p>20 relate to the WT-3 clerestory the same in the contract</p> <p>21 between Sciamé and Whitestone as they are between</p> <p>22 Whitestone and Yuanda?</p> <p>23 MR. CARBONE: I'll object.</p> <p>24</p>



<p style="text-align: right;">Page 82</p> <p>1 BY MR. GILL:</p> <p>2 Q. Yes, please answer.</p> <p>3 A. I believe so.</p> <p>4 Q. Do you know if this maximum deflection of 3.4</p> <p>5 inches could be ascertained based on the information</p> <p>6 contained in the architectural drawings, the structural</p> <p>7 drawings or the technical specifications as they existed</p> <p>8 on December 31st, 2016?</p> <p>9 A. I just need a minute to think about it.</p> <p>10 Q. That's fine. I'm not going to rush you. I</p> <p>11 want you to -- I want the best answer that you can give</p> <p>12 on this.</p> <p>13 A. I understand. And you said a specific date?</p> <p>14 Q. December 31st, 2016. And for reference, the</p> <p>15 RFI was issued on January 23rd, 2017.</p> <p>16 (Brief pause.)</p> <p>17 A. I would say yes. However, it's the job of</p> <p>18 the design team to specify that. Our assumptions of the</p> <p>19 makeup of what's in that area needs to be confirmed by</p> <p>20 the engineer of record. It would be a gross estimate</p> <p>21 which should not be relied upon.</p> <p>22 Q. You started that answer by saying you believe</p> <p>23 it's yes. That you believe that in the architectural</p> <p>24 drawings, the structural drawings and the technical</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Yeah. Do you know if the information that</p> <p>2 calculates this deflection would be on any structural</p> <p>3 drawing other than S003?</p> <p>4 A. I can't answer that question.</p> <p>5 Q. Do you know of any technical specification --</p> <p>6 Or strike that.</p> <p>7 Do you know of any specifications anywhere in</p> <p>8 the project manual where the information could be</p> <p>9 obtained that would help calculate this deflection?</p> <p>10 A. It would -- other than the specifications in</p> <p>11 the structural drawings, like I said before, it would be,</p> <p>12 you know, a culmination of the architectural, the</p> <p>13 structurals and the specifications. One would have to</p> <p>14 determine what applies to the specific area.</p> <p>15 Q. Do you know if it's in the structural steel</p> <p>16 specification?</p> <p>17 A. I don't know.</p> <p>18 Q. Looking at the same page on Exhibit 6,</p> <p>19 there's a red box, sorry, a yellow box that says</p> <p>20 "estimated roof deflection." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And you previously said that that was written</p> <p>23 by the design team?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 83</p> <p>1 specifications someone could have determined the maximum</p> <p>2 deflection of the 3.24, is that -- I want to make sure I</p> <p>3 got that right.</p> <p>4 A. Yes, but I think it would be a gross</p> <p>5 estimate. It would be negligent to use that -- those</p> <p>6 values would need to be confirmed by the engineer of</p> <p>7 record --</p> <p>8 Q. Where --</p> <p>9 A. -- in my opinion.</p> <p>10 Q. Where in the architectural drawings, the</p> <p>11 structural drawings or the technical specifications would</p> <p>12 one get all of the information if needed, that person</p> <p>13 needed, to come up with this calculation?</p> <p>14 A. It would be a culmination of all those -- a</p> <p>15 review of all those documents.</p> <p>16 Q. You mentioned earlier that there was a</p> <p>17 drawing S003. Would it be on that drawing?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if it would be in other</p> <p>20 structural drawings?</p> <p>21 A. It could be, yes.</p> <p>22 Q. You don't know one way or another?</p> <p>23 A. Could you ask the question again so I could</p> <p>24 answer it better?</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. The note states that: "WSP noted that</p> <p>2 approximately 50 percent of SDL has already occurred, and</p> <p>3 that figure can be reduced in the estimation of the total</p> <p>4 deflection." Do you know what that means?</p> <p>5 A. Yeah, that 50 percent of the value -- the SDL</p> <p>6 value can be taken from these values, and that derives I</p> <p>7 would say a new estimated roof deflection.</p> <p>8 Q. What does SDL stand for?</p> <p>9 A. I don't know.</p> <p>10 Q. So do you know what that means with respect</p> <p>11 to the clerestory as Yuanda designed and fabricated it?</p> <p>12 A. No.</p> <p>13 Q. Do you know what that means with respect to</p> <p>14 the clerestory as Whitestone installed it?</p> <p>15 A. Not with certainty.</p> <p>16 Q. What is your inclination of what it means</p> <p>17 with respect to the clerestory as installed?</p> <p>18 MR. CARBONE: Objection.</p> <p>19 BY THE WITNESS:</p> <p>20 A. My interpretation is this SDL, the value</p> <p>21 is the amount that the buildings would deflect under the</p> <p>22 construction process when concrete's applied to the</p> <p>23 slabs, when all the steel's erected, so on and so forth</p> <p>24 and the facade's erected.</p>

<p style="text-align: right;">Page 86</p> <p>1 BY MR. GILL:</p> <p>2 Q. How does that impact the installation or</p> <p>3 Whitestone's installation of the clerestory?</p> <p>4 A. I need to think about it for a second.</p> <p>5 (Brief pause.)</p> <p>6 I believe the only consequence would be or</p> <p>7 the only factor that would affect the installation of the</p> <p>8 WT-3 clerestory would be -- it's a timing thing. It must</p> <p>9 be installed after everything above is installed. When</p> <p>10 the SDL occurs, the facade should be installed</p> <p>11 afterwards. That's -- that's my interpretation of it.</p> <p>12 Q. If you can turn to -- I believe it's the next</p> <p>13 page. There's a couple of drawings. It's Page 5 of 9 at</p> <p>14 the top of this document.</p> <p>15 A. Yes.</p> <p>16 Q. It's listed or labeled as ASK 266. What is</p> <p>17 an ASK?</p> <p>18 A. An architectural sketch.</p> <p>19 Q. Do you know who created this ASK?</p> <p>20 A. The design team.</p> <p>21 Q. Did -- did the drawings, architectural,</p> <p>22 structural drawings, received, that Whitestone received</p> <p>23 from Sciamé of Perkins Eastman include any pen details</p> <p>24 for the WT-3 clerestory?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I don't know. If I could look at the</p> <p>2 original document, I could confirm.</p> <p>3 Q. Well, in the lower right-hand corner, there's</p> <p>4 a note that says WT 1, 3 and 8 all first review 2014-10-9</p> <p>5 Submittal 084413-020-01?</p> <p>6 A. I see that.</p> <p>7 Q. So this is the first submittal; right, with a</p> <p>8 copy?</p> <p>9 A. Yeah, it's a sheet copied and pasted to the</p> <p>10 back of this file.</p> <p>11 Q. It's one page. It's D331 of that entire</p> <p>12 submittal. I'm not saying it's the entire submittal but</p> <p>13 it's one page of it?</p> <p>14 MR. CARBONE: When you're referring to the</p> <p>15 entire submittal, are you talking about Submittal 1, are</p> <p>16 you talking about Submittal 2?</p> <p>17 MR. GILL: I'm talking about Submittal 1 as</p> <p>18 it's referred to in the document.</p> <p>19 MR. CARBONE: Object. Objection.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Yeah, the only reason why I can't 100 percent</p> <p>22 confirm without looking at the 01 is because it's just a</p> <p>23 page that's copied to the back of it. I don't know if</p> <p>24 they added these comments. I know it's the same color,</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Yes.</p> <p>2 Q. Did they -- did those details -- were those</p> <p>3 included -- Strike that.</p> <p>4 And for clarification, those were included</p> <p>5 prior to the fabrication and installation?</p> <p>6 A. The contract details you're referring to?</p> <p>7 Q. Yes.</p> <p>8 A. Yes.</p> <p>9 Q. Did Yuanda provide assembly and connection</p> <p>10 details with its submittal for the WT-3 clerestory?</p> <p>11 A. Yes.</p> <p>12 Q. If you could turn to the last page of this</p> <p>13 exhibit. Do you recognize that document?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document or this page?</p> <p>16 A. It's page D331.</p> <p>17 Q. Of what?</p> <p>18 A. Of the Yuanda project shop drawings.</p> <p>19 Q. Of Submittal 1 of the shop drawings; correct?</p> <p>20 A. Yes, 01, yes.</p> <p>21 Q. And this page includes the Perkins Eastman</p> <p>22 comments at the time that Perkins Eastman returned it to</p> <p>23 Sciamé and Sciamé returned it to Whitestone; is that</p> <p>24 correct?</p>	<p style="text-align: right;">Page 89</p> <p>1 but I just don't know.</p> <p>2 BY MR. GILL:</p> <p>3 Q. Okay.</p> <p>4 A. If I looked at the other one, I could say yes</p> <p>5 definitely. That's all I'm saying.</p> <p>6 Q. So if you look at the note in the middle of</p> <p>7 the page, it says: "Bottom of this connection." It goes</p> <p>8 on from there, but then there's a break in the second</p> <p>9 line. It says or second note that says: "See</p> <p>10 deflections of roof beam." Do you see that?</p> <p>11 MR. CARBONE: Just -- Mr. Gill, you said</p> <p>12 bottom of this connection. It says: "Bottom of this</p> <p>13 condition." I think you misread it.</p> <p>14 MR. GILL: Thank you for correcting me.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Do you see the second note that says: "See</p> <p>17 deflections of roof beam"?</p> <p>18 A. Yes.</p> <p>19 Q. When Whitestone received this submittal back,</p> <p>20 what did it do, if anything, regarding that comment about</p> <p>21 deflections of the roof beam?</p> <p>22 A. I don't know.</p> <p>23 Q. Did Whitestone undertake any investigation</p> <p>24 into the deflection of the roof beam?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. I don't know.</p> <p>2 Q. Did Whitestone provide any additional</p> <p>3 information to Yuanda regarding deflections of the roof</p> <p>4 beam?</p> <p>5 A. No. We would rely upon Yuanda to ask that</p> <p>6 question to us.</p> <p>7 Q. If this note were not on the -- Strike that.</p> <p>8 If Perkins Eastman removed this note when it</p> <p>9 returned the -- its comments to the second submittal,</p> <p>10 does that have any importance to Whitestone with respect</p> <p>11 to this detail?</p> <p>12 MR. CARBONE: Objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Would you mind repeating that, please.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Yeah. If the second submittal of this</p> <p>17 detail --</p> <p>18 A. Okay.</p> <p>19 Q. -- was returned from Perkins Eastman with</p> <p>20 comments and that note on this detail that says: "See</p> <p>21 deflection of roof beam" were no longer on this detail,</p> <p>22 would that have any impact on Whitestone or what would</p> <p>23 that mean to Whitestone, if anything?</p> <p>24 A. I don't believe it would have an impact.</p>	<p style="text-align: right;">Page 92</p> <p>1 all. Can you try that again?</p> <p>2 THE REPORTER: Sure.</p> <p>3 MR. GILL: It was -- it's not going to work.</p> <p>4 I'll try and rephrase it. I'll try and rephrase it.</p> <p>5 THE REPORTER: Am I -- can you not hear me</p> <p>6 or --</p> <p>7 MR. GILL: There's an echo.</p> <p>8 THE REPORTER: There's an echo. I'm going to</p> <p>9 go on mute then. Sorry about that.</p> <p>10 MR. CARBONE: It's like you have a</p> <p>11 reverberator</p> <p>12 THE REPORTER: Okay.</p> <p>13 BY MR. GILL:</p> <p>14 Q. Did this ASK, the issuance of this ASK 266</p> <p>15 change the requirements of the subcontract between Sciam</p> <p>16 and Whitestone with respect to this clerestory system,</p> <p>17 the installation of the clerestory system?</p> <p>18 MR. CARBONE: Objection.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't believe so.</p> <p>21 BY MR. GILL:</p> <p>22 Q. Did Perkins Eastman ever issue a formal</p> <p>23 modification to the architectural or structural drawings</p> <p>24 that incorporated this detail?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. Would the roof beam deflection still</p> <p>2 be a cause for concern if that note were no longer on</p> <p>3 this drawing?</p> <p>4 MR. CARBONE: Objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I'm sorry. Can you say it one more time,</p> <p>7 please.</p> <p>8 BY MR. GILL:</p> <p>9 Q. Would roof beam deflection be a cause for</p> <p>10 concern after Submittal 2 was returned if that note was</p> <p>11 removed?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Referring back to the ASK in this Exhibit 6,</p> <p>14 does this ASK revise the -- revise or otherwise alter the</p> <p>15 agreement between Whitestone and Sciam with respect to</p> <p>16 how Whitestone was going to install the WT-3 clerestory?</p> <p>17 MR. CARBONE: Objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I'm sorry I keep asking you to repeat but</p> <p>20 could you repeat it just a little bit slower?</p> <p>21 MR. GILL: Can you read that back, please.</p> <p>22 (Requested portion of the</p> <p>23 record read.)</p> <p>24 I'm sorry. We could not understand you at</p>	<p style="text-align: right;">Page 93</p> <p>1 A. No. It existed from the first day.</p> <p>2 Q. What do you mean it existed from the first</p> <p>3 day?</p> <p>4 A. The general design and assembly of this head</p> <p>5 detail where you see the brown lines and, yeah, the brown</p> <p>6 lines and the anchor attachment point is very similar to</p> <p>7 what's shown on the contract documents.</p> <p>8 Q. It's very similar but they have a larger</p> <p>9 movement slot, doesn't it?</p> <p>10 A. There is a movement slot. That's all I can</p> <p>11 say. I don't know if it's bigger or smaller or the same,</p> <p>12 but there is a movement slot there.</p> <p>13 Q. Okay. In 2017 did Sciam and Whitestone have</p> <p>14 e-mail correspondence regarding RFI 1130?</p> <p>15 A. Can you repeat that once?</p> <p>16 Q. In 2017 did Sciam and Whitestone have e-mail</p> <p>17 correspondence that discussed RFI 1130?</p> <p>18 A. Which is Exhibit 6?</p> <p>19 Q. Correct, Exhibit 6.</p> <p>20 A. Yes.</p> <p>21 Q. In 2017 did Whitestone have correspondence</p> <p>22 with Perkins Eastman regarding RFI 1130?</p> <p>23 A. I don't believe so.</p> <p>24 Q. In 2017 did Whitestone have internal e-mail</p>

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1 correspondence regarding RFI 1130?

2 A. It could be, but I'm not too sure.

3 Q. Did Whitestone have meetings where response

4 to RFI 1130 was discussed?

5 A. Yes.

6 Q. Are there meeting minutes or notes of those

7 meetings?

8 A. No.

9 MR. GILL: For the record, I requested

10 repeatedly for e-mails you produce regarding RFI 1130 in

11 2017 and they have not --

12 MR. CARBONE: Well, I'll take -- I'll take

13 what is, I am assuming is your additional request now.

14 I'll take it under advisement. My understanding is

15 everything you requested was produced, but I will bring

16 it up with Mr. Kushner and Mr. Rodriguez.

17 MR. GILL: Mr. Kushner informed me at the end

18 of December that he would produce -- that previously only

19 documents from January 1st, 2018 were produced, and we

20 came to an agreement that if documents back to

21 January 1st, 2017 were produced regarding the proposed

22 Change Order RFI 1130, roof deflection and one other

23 issue that I can't recall, that would satisfy the

24 production, but no production has been forthcoming at

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1 this point. I'm just putting it on the record.

2 MR. CARBONE: All right. Well, I'm not going

3 to -- I'm not privy to the intimacy of whatever

4 agreements you reached with Mr. Kushner, and to the

5 extent you feel that Mr. Kushner or my office has not

6 appropriately responded, I'm sure you'll address it, but

7 we could also have conversations off the record, and if

8 there's something missing that we actually have that

9 you're entitled to, I'm certainly sure we'll produce it.

10 BY MR. GILL:

11 Q. Are you familiar with the proposed change

12 order that Whitestone issued for the WT-3 clerestory?

13 A. Yes.

14 Q. Are you familiar with when Whitestone issued

15 that proposed change order?

16 A. If I saw the document, I could tell you the

17 date.

18 Q. Okay. If you can look at Exhibit 7.

19 A. Okay.

20 Q. What is Exhibit 7?

21 A. This is Whitestone's PCO number 90.

22 Q. And you see the date in the upper third

23 right-hand side of November 27th, 2018? Do you see that?

24 A. Yes.

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1 Q. Is that the first date that this PCO was

2 issued to Sciame?

3 A. As far as I'm aware, yes.

4 Q. What, if anything, did Whitestone do between

5 January 30th, 2017 when it received the RFI response and

6 November 27th, 2018 with respect to the WT-3 clerestory?

7 A. Whitestone and Yuanda worked on a remediation

8 concept.

9 Q. Yuanda was a collaborative partner in that

10 endeavor?

11 A. Yes.

12 Q. When did Whitestone decide to submit this

13 proposed Change Order 98?

14 A. I'm unaware of a specific date or time.

15 Q. Was there a reason why it was not issued

16 prior to November of 2018?

17 A. What I think would be a reasonable reason is

18 that we were working on the actual remediation. We

19 didn't know exactly what we were going to do, and once we

20 got a better idea of what the actual requirements would

21 be to complete the remediation, that's when we -- we

22 submitted it. We were able to quantify, you know, all

23 the numbers you see here.

24 Q. Okay. Who created this document Exhibit 7?

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1 Strike that.

2 There are drawings and attachments and things

3 like that. So with respect to the first five to six

4 pages up to WCC794, who created that portion of the

5 document?

6 MR. CARBONE: What pages -- 0791 through?

7 MR. GILL: 94.

8 MR. CARBONE: Thank you.

9 BY THE WITNESS:

10 A. I'm pretty sure I did.

11 BY MR. GILL:

12 Q. Okay.

13 A. Except for the -- the values that I -- that I

14 got for the second page were from Metro-Tech Erector's

15 Corp., but I'm pretty sure I created the first page, the

16 second page, the third page, and I most likely had a hand

17 in the fourth page as well.

18 Q. Okay. Whitestone created the fourth page

19 though which is the narrative; right? Is that correct?

20 A. I said yes.

21 Q. Oh, I didn't hear you. Sorry.

22 Was there anyone who was not an employee of

23 Whitestone who helped draft the narrative that's on Page

24 4 of this?

<p style="text-align: right;">Page 98</p> <p>1 A. No.</p> <p>2 Q. Okay. Were the statements that are included</p> <p>3 on Page 4 true and correct when this was submitted on</p> <p>4 November 27th, 2018?</p> <p>5 A. To the best of my knowledge, yes.</p> <p>6 Q. Does Whitestone stand by the correctness of</p> <p>7 those statements today?</p> <p>8 A. Yes.</p> <p>9 Q. The introductory paragraph says, in the</p> <p>10 second sentence on the second line that the "Remediation</p> <p>11 to existing facade was caused by omission of new</p> <p>12 auditorium roof deflection criteria prior to MCN."</p> <p>13 MR. CARBONE: Wait. You left out the word</p> <p>14 design but that's okay. You were close enough.</p> <p>15 MR. GILL: I do that often. Sorry. Thank you</p> <p>16 for correcting me.</p> <p>17 BY MR. GILL:</p> <p>18 Q. So with the insertion of design before</p> <p>19 criteria, that's what this says; isn't that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you believed on November 27th that that</p> <p>22 was a correct statement?</p> <p>23 A. Yes.</p> <p>24 Q. And you believe today that's a correct</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. GILL: Okay.</p> <p>2 MR. CARBONE: -- you know, if it's correct?</p> <p>3 BY MR. GILL:</p> <p>4 Q. The remainder of that statement after design</p> <p>5 criteria continues and says: "Between the auditorium and</p> <p>6 academic building after the facade was fabricated and</p> <p>7 installed per MCM submittals causing WCC's PCO number</p> <p>8 098."</p> <p>9 A. Right. So what was the question?</p> <p>10 Q. Do you stand by or the -- that statement was</p> <p>11 correct when you made it on November 27th, 2018?</p> <p>12 A. Yeah.</p> <p>13 Q. And you stand --</p> <p>14 A. Yes.</p> <p>15 Q. -- by that today?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Item number 4, the last sentence Whitestone</p> <p>18 states: "If fabrication's not made strictly in</p> <p>19 accordance with corrections noted, the items shall be</p> <p>20 rejected in the field and the contractor will be required</p> <p>21 to replace such work in accordance with corrected</p> <p>22 submittals and at their own expense." That is -- what</p> <p>23 does that statement refer to? Strike that. Let me ask a</p> <p>24 different way.</p>
<p style="text-align: right;">Page 99</p> <p>1 statement?</p> <p>2 A. Yes.</p> <p>3 Q. And not to beat a dead horse, but that</p> <p>4 omission was -- that information was supposed to come</p> <p>5 from whom?</p> <p>6 A. The design team.</p> <p>7 Q. So in item fact or note number 1, the second</p> <p>8 line, second sentence it says: "The submittals clearly</p> <p>9 detail capacity of system to accommodate movement." What</p> <p>10 submittals -- Strike that.</p> <p>11 You're referring to Submittal 1 and 2 of the</p> <p>12 Yuanda shop drawings; correct?</p> <p>13 A. Yes. Most specifically 2, the second one.</p> <p>14 Q. Okay. And when you made that statement in</p> <p>15 November of 2018, that was a correct statement?</p> <p>16 A. Yes.</p> <p>17 Q. And you stand by that statement today?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Looking at number 3, it says that: "RFI</p> <p>20 returned January 30th, 2017 issued new relative movement</p> <p>21 design criteria." Was that statement correct in November</p> <p>22 2018?</p> <p>23 MR. CARBONE: Could you just finish reading</p> <p>24 that statement if you're going to ask him --</p>	<p style="text-align: right;">Page 101</p> <p>1 What is the basis of making that statement?</p> <p>2 A. My interpretation of this statement is the</p> <p>3 shop drawings were returned made corrections noted, and</p> <p>4 there are notes on it that the vendor is required to</p> <p>5 fabricate in accordance with those corrections noted</p> <p>6 in --</p> <p>7 Q. Right.</p> <p>8 A. -- this sentence.</p> <p>9 Q. Where is that -- that comes from somewhere.</p> <p>10 It sounds like it comes from somewhere, but where does it</p> <p>11 come from?</p> <p>12 A. It comes from the project specifications.</p> <p>13 Q. Okay. Did Whitestone inspect the components</p> <p>14 that Yuanda fabricated and delivered for the WT-3</p> <p>15 clerestory prior to installing those components?</p> <p>16 A. Yes.</p> <p>17 Q. When Whitestone inspected those components,</p> <p>18 did those components comply with what was shown in the</p> <p>19 shop drawings?</p> <p>20 A. Yes, except for the base condition. That</p> <p>21 was --</p> <p>22 Q. And the base -- sorry. Go ahead.</p> <p>23 A. That was -- that was resolved, ultimately</p> <p>24 resolved.</p>



<p style="text-align: right;">Page 102</p> <p>1 Q. And just so we're clear, the base condition,  2 the sill condition that we discussed earlier in that NCR  3 report, does that have any impact on building movement?  4 A. Yes and no depending on the original design.  5 Q. Was that a complaint that Sciamme or the owner  6 or the architect raised with the RFI or after? And I'm  7 talking about did they raise the issue of this sill  8 condition with RFI 1130 or after?  9 MR. CARBONE: Could you just repeat that for  10 me, please. I'm sorry. I didn't quite follow you.  11 BY MR. GILL:  12 Q. The base or the sill condition, was that a  13 concern with respect to building movement that Sciamme,  14 the owner or the architect raised in RFI 1130 or at some  15 point after?  16 A. I believe it was before.  17 Q. Okay. I just want to limit what we're  18 talking about. We're talking about the head condition of  19 the clerestory; right? Strike that.  20 The dispute between Whitestone and Sciamme and  21 between Whitestone and Yuanda only deals with the head  22 condition; is that correct?  23 A. Yes.  24 Q. Did anyone including Sciamme reject any</p>	<p style="text-align: right;">Page 104</p> <p>1 rejected at any time before the architect issued its  2 response in RFI 1130?  3 A. Yes.  4 Q. Okay. When was that?  5 A. I don't know the date specifically, but it  6 was a result of trying to resolve the superstructures  7 report NCR.  8 Q. Was Yuanda informed that the WT-3 clerestory  9 was rejected for that reason before RFI 1130 was issued?  10 A. I don't know.  11 MR. GILL: I'd like to take another break,  12 brief break. Five minutes, is that okay?  13 MR. CARBONE: That's fine.  14 THE VIDEOGRAPHER: Off the record at 12:36.  15 (WHEREUPON, a break was  16 taken.)  17 We are back on the record at 12:47.  18 BY MR. GILL:  19 Q. Okay. Mr. Dearth, if you could look at  20 Exhibit 8, Defendant's Exhibit 8 which, for the record,  21 is an e-mail from Michael Pardee to a number of people  22 including the deponent on May 3rd, 2019. Do you  23 recognize this document?  24 A. Yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 element or component of the clerestory system before  2 Whitestone installed it?  3 A. Before installation, no.  4 Q. Did anyone including Sciamme or the architect  5 reject any element or component of the clerestory before  6 it issued the response to RFI 1130?  7 A. Issuance of 1130, yes.  8 Q. Who rejected it?  9 A. It was brought to our attention in  10 superstructures report 8404, I believe or -- it's written  11 down somewhere. I think it's 8404.  12 Q. Okay. Just so I'm clear, the head condition,  13 the building movement that's accommodated in the head  14 condition was raised as a concern in the superstructures  15 report which may be 8404?  16 A. The head condition, no.  17 Q. Okay.  18 A. The base, yes.  19 Q. Okay. Just the head condition I'm talking  20 about though. Was any element regarding the head  21 condition rejected -- Strike that. Let me ask a  22 different way.  23 Was any element with respect to the head  24 condition being able to accommodate building movement</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Is this the first communication from Sciamme  2 to Whitestone where Sciamme rejected the proposed Change  3 Order Number 98?  4 A. Yes.  5 MR. CARBONE: Could you hold on for one  6 second?  7 MR. GILL: Yeah.  8 MR. CARBONE: For some reason I may not have  9 gotten Exhibit 8. Hold on. My apologies. Here it is.  10 BY MR. GILL:  11 Q. Is this the first communication that  12 Whitestone received from Sciamme where Sciamme directed  13 Whitestone to proceed with repairs to the WT-3  14 clerestory?  15 A. I don't believe so.  16 Q. Okay. And there were -- you did testify  17 earlier that there was -- I don't recall if you testified  18 earlier whether there was earlier direction or rejection,  19 but how much -- how far in advance of May 3rd, 2019 did  20 Sciamme direct Whitestone to proceed with repairs?  21 A. I'm not too sure. It was before, and there  22 was like a lot of verbal back and forth.  23 Q. Is there anything in writing from Sciamme  24 where they formally directed Whitestone to proceed with</p>

<p style="text-align: right;">Page 106</p> <p>1 repairs?</p> <p>2 A. I'm not sure.</p> <p>3 Q. The prior e-mail or the prior communication</p> <p>4 where they directed Whitestone to proceed with repairs,</p> <p>5 is that the same time they indicated that the clerestory</p> <p>6 as installed was rejected?</p> <p>7 A. It would be sometime after that.</p> <p>8 Q. Okay. And I just want to make sure because I</p> <p>9 don't know if I have seen the communication where Sciame</p> <p>10 directed Whitestone to make repairs for the first time.</p> <p>11 When Sciame -- so I understand your testimony, when</p> <p>12 Sciame directed repairs made to the WT-3 clerestory, that</p> <p>13 was not the same time they rejected the clerestory as</p> <p>14 installed, if I understand you correctly?</p> <p>15 A. Would you mind saying that one more time,</p> <p>16 please.</p> <p>17 Q. Sure. Based on your last answer, it sounded</p> <p>18 like at -- when Sciame first directed Whitestone to make</p> <p>19 repairs, that was not the same time that Sciame rejected</p> <p>20 the as-installed clerestory?</p> <p>21 A. No, it was not the same time.</p> <p>22 Q. Okay. And did the rejection come before or</p> <p>23 after the direction to make repairs?</p> <p>24 A. The rejection of this PCO?</p>	<p style="text-align: right;">Page 108</p> <p>1 is that this is remedial work which is believed to be</p> <p>2 Whitestone's responsibility and not the design change</p> <p>3 warranty and change order to Whitestone." Do you see</p> <p>4 that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Do you agree with Sciame that this is -- the</p> <p>7 work to the WT-3 clerestory is remedial work?</p> <p>8 A. I agree that it's remedial work because of</p> <p>9 the design change.</p> <p>10 Q. Do you agree that this is warranty work or</p> <p>11 punch list work?</p> <p>12 A. No.</p> <p>13 Q. And I take it then based on your statement</p> <p>14 that it's remedial work only because there was a design</p> <p>15 change you disagree with the remainder of that sentence</p> <p>16 that believe to be Whitestone's responsibility and not a</p> <p>17 design change? Whitestone disagrees with that; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. If you can look at Exhibit 9 which is titled:</p> <p>21 "Notice of Dispute" dated May 3rd, 2019. What is this</p> <p>22 document?</p> <p>23 A. Notice of dispute.</p> <p>24 Q. What's the purpose of the notice of dispute?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. No, the rejection of the clerestory as</p> <p>2 installed.</p> <p>3 A. That came before this --</p> <p>4 Q. Right.</p> <p>5 A. -- the -- Exhibit 8.</p> <p>6 Q. Right. When did the rejection of the</p> <p>7 clerestory as installed come relative to or with respect</p> <p>8 to when Sciame directed Whitestone to make repairs?</p> <p>9 A. Sometime afterward.</p> <p>10 Q. So I -- and I'm not trying to belabor this.</p> <p>11 I just want to make sure I understand the time line.</p> <p>12 A. Okay.</p> <p>13 Q. At some time Sciame directed Whitestone to</p> <p>14 make repairs?</p> <p>15 A. Yes.</p> <p>16 Q. At some point after that they then formally</p> <p>17 or informally rejected the as-installed clerestory?</p> <p>18 A. Yeah. Yes, that -- I think so.</p> <p>19 Q. And then even further -- later is when they</p> <p>20 rejected the proposed change order in this e-mail?</p> <p>21 A. Definitely the last one, yes.</p> <p>22 Q. In the first paragraph of this e-mail, the</p> <p>23 second sentence states: "Based on the attached</p> <p>24 information from the architect, our collective position</p>	<p style="text-align: right;">Page 109</p> <p>1 A. The purpose of this notice of dispute is</p> <p>2 disputing Sciame's rejection of the validity of the</p> <p>3 change order.</p> <p>4 Q. It's disputing the prior Exhibit 8; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Were the statements made in this notice of</p> <p>8 dispute correct when Whitestone made them on May 3rd,</p> <p>9 2019?</p> <p>10 A. Yes.</p> <p>11 Q. Does Whitestone stand by the statements today</p> <p>12 as being true and accurate and correct of the</p> <p>13 statements -- Strike that. That was a terrible question.</p> <p>14 Sorry.</p> <p>15 Does Whitestone stand by the statements as</p> <p>16 true and correct that are included in this notice of</p> <p>17 dispute today?</p> <p>18 A. Yes.</p> <p>19 Q. If you can look at Exhibit 10, please. For</p> <p>20 the record, it is titled "Description of Dispute." It's</p> <p>21 a letter from Whitestone dated May 6, 2019. What is this</p> <p>22 document?</p> <p>23 A. It's a description of dispute.</p> <p>24 Q. What does that mean?</p>



<p style="text-align: right;">Page 110</p> <p>1 A. The description of dispute further defines,  2 hence the word description, of the notice of dispute of  3 why we believe that their false rejection of Exhibit 8  4 where PCO 98 is rejected.  5 Q. Do you know who created the first three pages  6 of this which are labeled YUANDA33306 through 33308?  7 A. Yes.  8 Q. Who created it?  9 A. Philip Carvelas.  10 Q. Did you take any part in creating this  11 document?  12 A. I believe so, yes.  13 Q. Were the statements contained in this Exhibit  14 10 true and correct when Whitestone submitted it to  15 Sciamme on May 6, 2019?  16 A. Yes.  17 Q. As of today, does Whitestone stand by the  18 statements as true and correct that are contained in this  19 exhibit?  20 A. Yes.  21 Q. If you look at the second paragraph, it  22 states: "Whitestone's and Yuanda's respective installed  23 WT-3 clerestory work is compliant with 084413-020-02 MCM  24 which is in turn compliant with the contract documents."</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Does Whitestone believe that Yuanda was  2 responsible for any changes to the deflection criteria?  3 A. No. Specifically related to the building  4 movements. Add that to the end of that statement.  5 Q. That's fine. And just so we're clear, based  6 on what you just said, the altered design criteria only  7 related to building movement; right? Let me back up.  8 There are deflections -- deflection  9 requirements for building components including the WT-3  10 clerestory because of building weight, because of wind  11 loads, things like that; right? The clerestory must  12 accommodate movement within its framework; is that  13 accurate?  14 MR. CARBONE: Objection.  15 BY MR. GILL:  16 Q. Is that accurate?  17 A. Yes.  18 Q. Okay. Those movements are different from  19 building movements; correct?  20 MR. CARBONE: Objection.  21 BY THE WITNESS:  22 A. Can you explain how those two sentences  23 relate --  24 BY MR. GILL:</p>
<p style="text-align: right;">Page 111</p> <p>1 Was that statement correct when it was made on  2 May 6, 2019?  3 A. Yes.  4 Q. That statement is correct today?  5 A. I believe so, yes.  6 Q. Whitestone is of the opinion that Yuanda's  7 WT-3 clerestory work is compliant with that submittal  8 which is in turn compliant with the contract documents?  9 A. Yes.  10 Q. In the third paragraph, Whitestone states  11 that: "Whitestone and Yuanda mutually agree that the  12 design team changed the contract deflection criteria  13 noted on S-003- or .00 when they issued RFI 1130 response  14 in 2017 and after the 084413-020-02 MCM work was  15 fabricated and installed." Was that statement true and  16 correct when it was made or that portion of that sentence  17 true and correct when it was made on May 6, 2019?  18 A. Yes.  19 Q. Is that still correct today?  20 A. Yes.  21 Q. And as we've discussed, the design team that  22 changed the deflection criteria was Perkins Eastman or  23 the engineer of record; correct?  24 A. Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Yeah.  2 A. -- as you see it?  3 Q. Yeah. The clerestory needs to accommodate  4 movement because of forces of wind or side loads;  5 correct?  6 A. Yes.  7 Q. The clerestory also needs to accommodate  8 movement of different building elements, the structural  9 steel relative to the clerestory; correct?  10 A. Yes.  11 Q. And those are two different kinds of  12 movement? Even though they're deflections, they're two  13 different deflections?  14 A. Agreed.  15 Q. Yuanda was responsible for designing the  16 deflection within the clerestory itself because of wind  17 loads or side loads and things like that?  18 MR. CARBONE: Objection.  19 BY MR. GILL:  20 Q. Is that accurate?  21 A. It's -- it's accurate, but they also need to  22 comply with the other movements we were discussing, the  23 building movements as well, but that is part of it, yes.  24 Q. I understand. Did Yuanda do anything --</p>

<p style="text-align: right;">Page 114</p> <p>1 Strike that.</p> <p>2 Was Yuanda responsible in any way for the</p> <p>3 design deflection criteria with respect to building</p> <p>4 movement after December 31st, 2016?</p> <p>5 MR. CARBONE: Objection.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't believe so.</p> <p>8 BY MR. GILL:</p> <p>9 Q. With respect to Submittal 2 of the shop</p> <p>10 drawing --</p> <p>11 A. Excuse me. I'm sorry to interrupt you.</p> <p>12 Unless their system impacted the building's structure.</p> <p>13 They would have to relay that information to the engineer</p> <p>14 of record, and then the design criteria may or may not be</p> <p>15 modified from there.</p> <p>16 Q. As far as you know, did the WT-3 clerestory</p> <p>17 as designed modify the building's structural criteria?</p> <p>18 A. As far as I'm --</p> <p>19 MR. CARBONE: Objection.</p> <p>20 THE WITNESS: I'm sorry.</p> <p>21 MR. CARBONE: No, I objected. You could</p> <p>22 answer.</p> <p>23 BY THE WITNESS:</p> <p>24 A. As far as I'm aware, no.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay. What would have occurred if Submittal</p> <p>2 084413-020-02 had been returned from Perkins Eastman with</p> <p>3 a revise and resubmit note?</p> <p>4 MR. CARBONE: Objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Is it relating to this issue specifically?</p> <p>7 BY MR. GILL:</p> <p>8 Q. Pardon?</p> <p>9 A. Is it relating to this issue specifically</p> <p>10 or a work order change?</p> <p>11 Q. With respect -- well, no. What would the</p> <p>12 procedure be after Perkins Eastman returned a -- this</p> <p>13 submittal with a revise and resubmit direction?</p> <p>14 A. There would ultimately be another submittal</p> <p>15 made, a third revision. If it was rejected on the basis</p> <p>16 of this deflection issue, there would be an RFI generated</p> <p>17 by Yuanda to specify what these requirements were.</p> <p>18 That's how I see it.</p> <p>19 Q. Does Whitestone have reason to doubt that</p> <p>20 Yuanda would create a third submittal to answer a revise</p> <p>21 and resubmit notation from the architect?</p> <p>22 MR. CARBONE: Objection.</p> <p>23 BY THE WITNESS:</p> <p>24 A. Yeah, I don't quite understand what you're</p>
<p style="text-align: right;">Page 115</p> <p>1</p> <p>2 BY MR. GILL:</p> <p>3 Q. This third paragraph in Exhibit 10, I'm not</p> <p>4 going to read the whole thing but -- and feel free to</p> <p>5 read it to yourself -- it talks about a revise and</p> <p>6 resubmit direction regarding the submittal and any new</p> <p>7 design features. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Does Whitestone have an opinion about whether</p> <p>10 the Submittal 2 should have been returned as a revised</p> <p>11 and resubmit rather than a with comments noted?</p> <p>12 MR. CARBONE: Objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Would you mind repeating that one more time?</p> <p>15 I'm sorry.</p> <p>16 BY MR. GILL:</p> <p>17 Q. Does Whitestone have an opinion about whether</p> <p>18 Perkins Eastman should have returned Submittal 2 with the</p> <p>19 note of revise and resubmit rather than returning it with</p> <p>20 a make corrections noted?</p> <p>21 MR. CARBONE: Objection.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I believe so, yes.</p> <p>24 BY MR. GILL:</p>	<p style="text-align: right;">Page 117</p> <p>1 getting at.</p> <p>2 BY MR. GILL:</p> <p>3 Q. Do you -- do you have any reason to doubt</p> <p>4 that Yuanda would provide the submittal as required?</p> <p>5 MR. CARBONE: Objection.</p> <p>6 BY THE WITNESS:</p> <p>7 A. No. I believe they would provide what we</p> <p>8 asked for.</p> <p>9 BY MR. GILL:</p> <p>10 Q. On the first page of Exhibit 10, the last</p> <p>11 paragraph is entirely bolded and underlined. Do you know</p> <p>12 why Whitestone did that? Obviously it's for emphasis,</p> <p>13 but what was the purpose of emphasizing the entire</p> <p>14 paragraph?</p> <p>15 A. I think like you said, just for emphasis.</p> <p>16 I'm not really too sure why other than that.</p> <p>17 Q. If you turn to the second page, the first</p> <p>18 paragraph, it refers to NCR Report Number 4 referencing</p> <p>19 the -- referenced in Sciame's e-mail, and that e-mail is</p> <p>20 Exhibit 8, and that talks about the starter sill. Is</p> <p>21 that the starter sill we talked about earlier?</p> <p>22 A. Yes.</p> <p>23 Q. Do you agree with -- Strike that.</p> <p>24 Was the last sentence of that paragraph, that</p>

<p style="text-align: right;">Page 118</p> <p>1 "besides NCR Item Number 4 is not relevant to 2 Whitestone's PCO 098," was that true and correct when the 3 statement was made on May 6, 2019? 4 A. Yes. 5 Q. Is that true and correct today? 6 A. Yes. 7 Q. If you go down to the fourth paragraph on 8 Page 2, the first half of that first sentence states that 9 "084413-020-02 MCN is detailed in accordance with the 10 design criteria noted on S/003.00." Do you see that? 11 A. Yes. 12 Q. Was that a true and correct statement when 13 this notice -- description of view was submitted? 14 A. To the best of my knowledge, yes. 15 Q. That continues and says: "And until the 2019 16 RFI 1130 response after the MCN work was fabricated and 17 installed no other deflection criteria has been issued." 18 Was that statement true and correct when this description 19 of dispute was issued in 2019? 20 MR. CARBONE: Before he answers, could you 21 just -- are we in the fourth paragraph? 22 MR. GILL: Yeah. 23 MR. CARBONE: Where are you reading? Where 24 are you reading from, which sentence?</p>	<p style="text-align: right;">Page 120</p> <p>1 documents. 2 Q. Do you see on the bottom of the second page 3 and going on to the third page Whitestone quotes 4 extensively from a response from Yuanda? Do you see 5 that? 6 A. Yeah. Which portion? 7 Q. I'm just referring in general to it. There's 8 a comment: "The lower excerpts of Yuanda's commentary to 9 this matter," and then there is four paragraphs that are 10 quoted directly. Do you see those? 11 A. Yes. 12 Q. When Whitestone submitted this description of 13 dispute to Sciamme, did Whitestone accept as true and 14 correct Yuanda's commentary as stated in this description 15 of dispute? 16 MR. CARBONE: Objection. 17 BY THE WITNESS: 18 A. I believe so, yes. 19 BY MR. GILL: 20 Q. Whitestone wouldn't pass along an analysis or 21 information that it believed to be incorrect; is that 22 accurate? 23 A. Yes. 24 Q. If you look at the first full paragraph on</p>
<p style="text-align: right;">Page 119</p> <p>1 MR. GILL: The first sentence. That was the 2 second half of the first sentence on lines 1 and 2 of the 3 fourth paragraph. 4 MR. CARBONE: Okay. "After the MCN work was 5 fabricated and installed no other deflection criteria has 6 been issued." 7 MR. GILL: Correct. 8 MR. CARBONE: Okay. Thank you. 9 BY MR. GILL: 10 Q. Was that second half of the sentence true and 11 correct when it was made in May 2019? 12 A. Yes. 13 Q. Is it true and correct today? 14 A. Yes. 15 Q. Is there any reason that Whitestone or Yuanda 16 should have known about any other deflection criteria 17 before the RFI response was received in July -- January 18 2017? 19 A. Can you say that one more time, please. 20 Q. Is there any reason that Whitestone or Yuanda 21 should have known about any other deflection, sorry, 22 deflection criteria before the RFI response was issued in 23 January 2017? 24 A. No. It should be specified in the contract</p>	<p style="text-align: right;">Page 121</p> <p>1 the third page -- and this is part of the quoted analysis 2 from Yuanda. If you look at the second -- Strike that. 3 The last sentence of that first full paragraph -- 4 A. Of which -- which page? 5 Q. Sorry. 6 A. 308? 7 Q. The third page of the exhibit which is 33308. 8 A. Okay. Whereabouts? 9 Q. The first full paragraph on that page which 10 is still Yuanda's commentary or analysis. 11 A. Yes. 12 Q. The last sentence of that paragraph, do you 13 see that Yuanda states: "The deformation should have 14 been taken into account with the design of the structural 15 steel"? 16 A. I see that. 17 Q. Does Whitestone agree with that statement 18 that Yuanda made? 19 A. Yes. 20 Q. Between May 6, 2019 when this description of 21 dispute was submitted and today has Whitestone changed 22 its opinion about whether the clerestory as Whitestone 23 installed it conforms to the requirements of the drawings 24 and specifications?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. Would you mind repeating that --</p> <p>2 Q. Sure.</p> <p>3 A. -- just a little bit slower, please.</p> <p>4 Q. Absolutely. Between May 6, 2019, the date</p> <p>5 that this description of dispute was submitted, and today</p> <p>6 has Whitestone changed its opinion about whether the</p> <p>7 clerestory as Whitestone installed it conforms to the</p> <p>8 requirements of the drawings and specifications?</p> <p>9 A. No, our opinion has not changed.</p> <p>10 Q. If you can turn to -- we're going to skip</p> <p>11 Exhibit 11. Go to Exhibit 12. Have you seen this</p> <p>12 document before?</p> <p>13 A. I don't think so, no.</p> <p>14 Q. Okay. For the record, this Exhibit 12 is a</p> <p>15 letter from Whitestone to Yuanda dated June 24th, 2019.</p> <p>16 And at the very beginning of this deposition I showed you</p> <p>17 the rider which is Exhibit 1. Item 18 of the rider is --</p> <p>18 refers to "Whitestone's June 24th, 2019 letter to Yuanda</p> <p>19 and the contents thereof." You stated you would be</p> <p>20 unable to -- you would either be unable to answer</p> <p>21 questions or you would answer to the best of your</p> <p>22 ability. Are you able to answer questions about this</p> <p>23 letter even though you haven't seen it?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 124</p> <p>1 Do you know what this document is?</p> <p>2 A. I just know it's a letter.</p> <p>3 Q. Okay. Let me skip this.</p> <p>4 As far as you know, did Whitestone ever</p> <p>5 inform Yuanda that Whitestone was rejecting Yuanda's</p> <p>6 work?</p> <p>7 A. Yes.</p> <p>8 Q. When did Whitestone inform Yuanda that</p> <p>9 Whitestone was rejecting Yuanda's work?</p> <p>10 A. I believe it was a letter that Steven or Phil</p> <p>11 drafted and sent to them.</p> <p>12 Q. Okay. I will represent to you that as far as</p> <p>13 I know Exhibit 12 is the only letter or maybe not the</p> <p>14 only letter but is a letter that is referred to in</p> <p>15 multiple pleadings regarding rejection. So going back to</p> <p>16 12, looking at the first paragraph -- Strike that.</p> <p>17 Go to the second page. Do you see the</p> <p>18 signature there?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recognize that signature?</p> <p>21 A. I do.</p> <p>22 Q. Whose signature is that?</p> <p>23 A. Steven Grzic.</p> <p>24 Q. Okay. Going back to the first page, first</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. CARBONE: Adam, what number -- Adam, what</p> <p>2 number was this in your list in Exhibit 1?</p> <p>3 MR. GILL: Eighteen.</p> <p>4 MR. CARBONE: Eighteen, thank you.</p> <p>5 MR. GILL: Yeah.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Would you mind just repeating that once --</p> <p>8 BY MR. GILL:</p> <p>9 Q. Yeah.</p> <p>10 A. -- again?</p> <p>11 Q. I'm only asking to see whether I need to</p> <p>12 waste time on this or not. Are you able to answer</p> <p>13 questions about the contents of this letter and the</p> <p>14 accuracy of the contents since -- even though you have</p> <p>15 not seen this before?</p> <p>16 A. You can ask me questions, but if I don't know</p> <p>17 the answer, I'll let you know or -- or no. I don't know.</p> <p>18 Q. Well, let me start out --</p> <p>19 A. I didn't write the letter, so I'm not aware</p> <p>20 of the --</p> <p>21 Q. Sorry.</p> <p>22 A. Pardon?</p> <p>23 Q. No. No. We're trying to both get to a place</p> <p>24 here.</p>	<p style="text-align: right;">Page 125</p> <p>1 paragraph, it states: "We are writing to formally notify</p> <p>2 you that Sciamé has rejected as non-conforming Yuanda's</p> <p>3 verification of the WT-3 clerestory structural</p> <p>4 component." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that Whitestone is saying that</p> <p>7 Sciamé has rejected the fabrication?</p> <p>8 A. Yes.</p> <p>9 Q. I'll let you read the whole letter, but is</p> <p>10 there anywhere in this letter that Whitestone informed</p> <p>11 Yuanda that Whitestone is rejecting the WT-3 clerestory?</p> <p>12 MR. CARBONE: Objection. The letter was</p> <p>13 written by someone else. The letter speaks for itself</p> <p>14 but --</p> <p>15 MR. GILL: This witness is being deposed as</p> <p>16 the corporate designee of Whitestone, and his answers are</p> <p>17 not his. They are of the corporation, and the</p> <p>18 corporation had the duty to educate this witness based on</p> <p>19 this document, so please answer.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Okay. So you want me to read this and</p> <p>22 confirm if what again, please.</p> <p>23 BY MR. GILL:</p> <p>24 Q. Whether or not anywhere in this letter</p>

<p style="text-align: right;">Page 126</p> <p>1 Whitestone informed Yuanda that Whitestone as opposed to</p> <p>2 Sciamé was rejecting Yuanda's work.</p> <p>3 A. Okay. Hold on.</p> <p>4 (Witness peruses document.)</p> <p>5 From reading the letter, the only thing I see</p> <p>6 is that Sciamé is rejecting. Whitestone's directing</p> <p>7 Yuanda to remediate the work.</p> <p>8 Q. To be clear, at the time this letter was sent</p> <p>9 on June 24th, 2019, Whitestone did not agree with Sciamé</p> <p>10 that the work did not conform to the requirements of the</p> <p>11 architectural drawings, structural drawings or</p> <p>12 specifications?</p> <p>13 A. We did not agree.</p> <p>14 Q. Turn to the second page of this letter, the</p> <p>15 first paragraph. Do you see in the top line Whitestone</p> <p>16 states that: "Yuanda is hereby directed to remediate the</p> <p>17 misfabricated already installed WT-3 clerestory"?</p> <p>18 A. Yes.</p> <p>19 Q. What does Whitestone mean by misfabricated?</p> <p>20 A. Misfabricated as determined by the design</p> <p>21 team, that the WT-3 clerestory head connection will not</p> <p>22 accommodate the wind deflections.</p> <p>23 Q. And, again, Whitestone does not agree with</p> <p>24 the design team that that component was misfabricated; is</p>	<p style="text-align: right;">Page 128</p> <p>1 13:23.</p> <p>2 (WHEREUPON, a lunch break</p> <p>3 was taken.)</p> <p>4 We're back on the record, 14:16.</p> <p>5 MR. CARBONE: You were in the military.</p> <p>6 BY MR. GILL:</p> <p>7 Q. Mr. Dearth, during your break, did you have</p> <p>8 any conversations with anyone at Whitestone regarding the</p> <p>9 substance of the deposition that we have -- the substance</p> <p>10 of the topics that we've addressed so far in this</p> <p>11 deposition?</p> <p>12 A. No.</p> <p>13 Q. Did you have a conversation with your</p> <p>14 attorney about the substance of the topics that we</p> <p>15 addressed so far?</p> <p>16 A. Yes.</p> <p>17 Q. What did you and your attorney discuss?</p> <p>18 MR. CARBONE: Objection. Directing the</p> <p>19 witness not to answer. Any conversations I had with him</p> <p>20 are privileged.</p> <p>21 MR. GILL: Conversations regarding coaching a</p> <p>22 witness are not privileged under Hall versus Clifton</p> <p>23 which is an Eastern District of Pennsylvania case which</p> <p>24 was adopted into the Southern District in New York in</p>
<p style="text-align: right;">Page 127</p> <p>1 that correct?</p> <p>2 A. We don't agree that it was misfabricated</p> <p>3 based on the second submittal made corrections.</p> <p>4 Q. Okay. That's it for that document.</p> <p>5 MR. CARBONE: It's like almost 1:30. When are</p> <p>6 we breaking for lunch?</p> <p>7 MR. GILL: I wasn't -- if you want to break</p> <p>8 for lunch, that's fine. I wasn't planning on it, but we</p> <p>9 certainly can.</p> <p>10 MR. CARBONE: Yeah, well, I would certainly</p> <p>11 like to break for lunch.</p> <p>12 MR. GILL: That's fine.</p> <p>13 MR. CARBONE: How many hours do you think?</p> <p>14 MR. GILL: Another -- less than two, hour and</p> <p>15 a half to two.</p> <p>16 MR. CARBONE: All right. So why don't we take</p> <p>17 a half an hour break for lunch or 45 minutes and then</p> <p>18 we'll come back?</p> <p>19 MR. GILL: Okay.</p> <p>20 MR. CARBONE: All right?</p> <p>21 MR. GILL: Yes. Sounds good.</p> <p>22 MR. CARBONE: Okay. Great. Thank you.</p> <p>23 MR. GILL: Thank you.</p> <p>24 THE VIDEOGRAPHER: Going off the record at</p>	<p style="text-align: right;">Page 129</p> <p>1 2011 and Abu Dhabi Commercial Bank versus Morgan Stanley.</p> <p>2 BY MR. GILL:</p> <p>3 Q. So I ask again. During the break, did Mr.</p> <p>4 Carbone direct you to answer questions in a certain way?</p> <p>5 MR. CARBONE: What I'll do is I'll take a --</p> <p>6 at the next break or whatever send me those citations.</p> <p>7 I'll certainly read the cases, but right now I'm</p> <p>8 directing the witness not to answer the question what we</p> <p>9 may have discussed regarding the subject matter of this</p> <p>10 lawsuit.</p> <p>11 MR. GILL: I'm not --</p> <p>12 MR. CARBONE: And if you're right and I'm</p> <p>13 wrong, certainly I'll let him answer the questions.</p> <p>14 MR. GILL: I'm not talking about the lawsuit</p> <p>15 in general. I'm talking about the substance of the</p> <p>16 deposition, but understood.</p> <p>17 BY MR. GILL:</p> <p>18 Q. Mr. Dearth, on the advice of counsel are you</p> <p>19 refusing to answer the question?</p> <p>20 A. I don't know what to do here.</p> <p>21 MR. CARBONE: Well --</p> <p>22 BY THE WITNESS:</p> <p>23 A. No. Yes.</p> <p>24 MR. CARBONE: -- I'm directing you not to</p>

<p style="text-align: right;">Page 130</p> <p>1 answer the question.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Yes, so I'm not -- I'm not going to.</p> <p>4 MR. GILL: Can you please certify the</p> <p>5 question, Madam Court Reporter.</p> <p>6 MR. CARBONE: I'm sorry. I didn't hear you,</p> <p>7 Adam.</p> <p>8 MR. GILL: I asked the court reporter to</p> <p>9 certify the question.</p> <p>10 MR. CARBONE: Okay.</p> <p>11 MR. GILL: I am getting a little bit of reverb</p> <p>12 or echo. Are you guys getting that when I talk?</p> <p>13 THE VIDEOGRAPHER: I can hear you just fine.</p> <p>14 THE REPORTER: Yeah, no, I think it's just on</p> <p>15 the witness and Mr. Carbone's end. I'm getting it too.</p> <p>16 MR. CARBONE: Some of it may be --</p> <p>17 THE REPORTER: Do you want to go off the</p> <p>18 record?</p> <p>19 MR. CARBONE: Some of it may be from me.</p> <p>20 MR. GILL: No. It's rectified now. It sounds</p> <p>21 fine now.</p> <p>22 THE VIDEOGRAPHER: Okay. I'm off the record.</p> <p>23 MR. GILL: Then I guess that exchange about</p> <p>24 echo can be off the record if Mr. Carbone agrees.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Did Whitestone expect Yuanda to run</p> <p>2 scaffolding and equipment to install the new components?</p> <p>3 A. Yes.</p> <p>4 Q. Why?</p> <p>5 A. So they could access the work area.</p> <p>6 Q. Why was the cost of scaffolding and</p> <p>7 equipment, why was that Yuanda's responsibility?</p> <p>8 A. So they could access the work area.</p> <p>9 Q. Why was Yuanda responsible for paying for</p> <p>10 scaffolding and equipment?</p> <p>11 A. Because they're responsible for the</p> <p>12 remediation.</p> <p>13 Q. Are they responsible for remediating the</p> <p>14 installation?</p> <p>15 MR. CARBONE: Objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I'm just thinking here.</p> <p>18 (Brief pause.)</p> <p>19 Yes, they are.</p> <p>20 BY MR. GILL:</p> <p>21 Q. What is that -- what is the basis of</p> <p>22 Whitestone's position?</p> <p>23 A. The basis of Whitestone's position is that</p> <p>24 the owner and construction manager rejected the</p>
<p style="text-align: right;">Page 131</p> <p>1</p> <p>2 BY MR. GILL:</p> <p>3 Q. So continuing on, Mr. Dearth, we were talking</p> <p>4 about rejection of -- we were talking about Sciam's</p> <p>5 rejection of Whitestone's work and Sciam's rejection of</p> <p>6 Yuanda's work. After Sciam rejected the installation of</p> <p>7 the clerestory what did Whitestone expect Yuanda to do?</p> <p>8 And I'm not referring to a document. I'm just asking you</p> <p>9 what did Whitestone expect Yuanda to do in response to</p> <p>10 the rejection of the work.</p> <p>11 A. To remediate at its sole cost per the</p> <p>12 approved remediation shop drawings.</p> <p>13 Q. Remediate what?</p> <p>14 A. Remediate the clerestory and head condition.</p> <p>15 Q. Did Whitestone expect that Yuanda would</p> <p>16 redesign the connection between the curtainwall and the</p> <p>17 structure?</p> <p>18 A. Yes.</p> <p>19 Q. Did Whitestone expect that Yuanda would</p> <p>20 provide structural calculations for that new connection?</p> <p>21 A. Yes.</p> <p>22 Q. Did Whitestone expect Yuanda to fabricate and</p> <p>23 deliver new components for that connection?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 installation.</p> <p>2 Q. I understand that. But why is Yuanda</p> <p>3 responsible -- why is Yuanda financially responsible for</p> <p>4 installing the new components?</p> <p>5 A. The reason why they're responsible for the</p> <p>6 installation of the remediation is because when</p> <p>7 something's rejected by the owner, Whitestone is</p> <p>8 responsible to do the remediation. Therefore, the vendor</p> <p>9 is responsible for doing the remediation.</p> <p>10 Q. And Whitestone did the original installation;</p> <p>11 correct?</p> <p>12 A. Whitestone did -- or Metro-Tech which is a</p> <p>13 subcontractor of Whitestone did the installation based</p> <p>14 off of the information provided by Yuanda.</p> <p>15 Q. Yuanda didn't do the original installation?</p> <p>16 A. Right, but they did do the drawings --</p> <p>17 Q. Correct.</p> <p>18 A. -- which is what we used to do the</p> <p>19 installation.</p> <p>20 Q. So why is Yuanda responsible for the</p> <p>21 installation of new components based on new design</p> <p>22 criteria?</p> <p>23 MR. CARBONE: Objection. I think you already</p> <p>24 asked and answered that question but --</p>



<p style="text-align: right;">Page 134</p> <p>1 MR. GILL: I asked a little different question</p> <p>2 I think.</p> <p>3 MR. CARBONE: Basically the same but okay.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Would you mind just saying that one more</p> <p>6 time?</p> <p>7 BY MR. GILL:</p> <p>8 Q. Why is Yuanda responsible for installing the</p> <p>9 new components that were designed based on new design</p> <p>10 criteria?</p> <p>11 MR. CARBONE: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Because the owner directed Whitestone to</p> <p>14 perform the remediation. Therefore, we directed our</p> <p>15 subcontractor to do the same or our vendor to do the</p> <p>16 same.</p> <p>17 BY MR. GILL:</p> <p>18 Q. I understand, but where is White -- where</p> <p>19 does it say in any document that Whitestone was</p> <p>20 responsible, financially responsible for corrective work,</p> <p>21 remedial work, warranty work, punch list work regarding</p> <p>22 the head connection of the WT-3?</p> <p>23 MR. CARBONE: Did you mean to say Whitestone?</p> <p>24 MR. GILL: I don't -- let me ask again. Let</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Did Yuanda provide revised structural</p> <p>2 calculations for that connection?</p> <p>3 A. Yes.</p> <p>4 Q. Did Whitestone -- sorry. Did Yuanda offer to</p> <p>5 fabricate certain components?</p> <p>6 A. Yes, at a cost.</p> <p>7 Q. At whose cost?</p> <p>8 A. Whitestone, I believe.</p> <p>9 Q. If you can look at Exhibit 13.</p> <p>10 A. Yes.</p> <p>11 Q. Do you recognize this document?</p> <p>12 A. Yeah, this is the e-mail that I wrote or it's</p> <p>13 communication between myself and Yuanda.</p> <p>14 Q. Okay. And the final date -- the date of the</p> <p>15 finding on the top on Page 1 is July 20th, 2018; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. If you can go back about 12 pages --</p> <p>18 MR. CARBONE: And I -- okay.</p> <p>19 BY MR. GILL:</p> <p>20 Q. There's an e-mail at the bottom of Page 12 of</p> <p>21 13 from you dated March 6, 2018. Do you see that?</p> <p>22 A. March 6th, yes.</p> <p>23 Q. Okay.</p> <p>24 MR. CARBONE: Let me get there.</p>
<p style="text-align: right;">Page 135</p> <p>1 me withdraw the question and ask again.</p> <p>2 MR. CARBONE: You said where does it say</p> <p>3 Whitestone. I don't know if you --</p> <p>4 MR. GILL: I didn't mean to say Whitestone.</p> <p>5 Let me restate that. Thank you.</p> <p>6 BY MR. GILL:</p> <p>7 Q. Where does it say in any document that Yuanda</p> <p>8 is liable to Whitestone for the cost of installing the</p> <p>9 new components for the WT-3 connection to the structure?</p> <p>10 A. I don't know where it's stated.</p> <p>11 Q. Is it stated anywhere?</p> <p>12 A. I don't know where it's stated.</p> <p>13 Q. That's not my question. Is it stated</p> <p>14 anywhere?</p> <p>15 A. I believe so, but I don't know where.</p> <p>16 Q. Okay. If it's stated somewhere, would that</p> <p>17 be stated in the purchase order agreement?</p> <p>18 A. Most likely, but, again, I'm not aware.</p> <p>19 Q. Okay. Did Yuanda redesign the connection</p> <p>20 between the clerestory and the building structure?</p> <p>21 A. It was a collaborative effort between myself</p> <p>22 and Yuanda.</p> <p>23 Q. So Yuanda did redesign the connection?</p> <p>24 A. In collaboration with Whitestone, yes.</p>	<p style="text-align: right;">Page 137</p> <p>1 MR. GILL: Okay.</p> <p>2 MR. CARBONE: Is that February 26, 2018?</p> <p>3 MR. GILL: March 6, 2018.</p> <p>4 MR. CARBONE: March 6th. Hold on one second.</p> <p>5 I got it. From James Dearth at 8:57?</p> <p>6 MR. GILL: Correct.</p> <p>7 MR. CARBONE: Okay.</p> <p>8 BY MR. GILL:</p> <p>9 Q. If you turn the page to the body of the</p> <p>10 e-mail, do you see the second paragraph where you state:</p> <p>11 "We need to find facts and define a time line showing the</p> <p>12 design submission in order to have the client bear the</p> <p>13 cost of the remediation activity." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And was that true when you wrote this?</p> <p>16 A. Yes.</p> <p>17 Q. And you believed when you wrote this that the</p> <p>18 work was needed due to a design omission?</p> <p>19 A. Yes.</p> <p>20 Q. If you turn towards the front two pages, you</p> <p>21 see there's an e-mail March 13th also from you?</p> <p>22 A. Yes.</p> <p>23 Q. And you start out: "Kindly respond to the</p> <p>24 question below." And --</p>



<p style="text-align: right;">Page 138</p> <p>1 MR. CARBONE: Second -- second page?</p> <p>2 MR. GILL: No. It's about the ninth page.</p> <p>3 It's March 13th, 2018.</p> <p>4 MR. CARBONE: Hold on.</p> <p>5 MR. GILL: No, I think it's the eleventh page.</p> <p>6 MR. CARBONE: They're not numbered. That's</p> <p>7 the hard part.</p> <p>8 MR. GILL: I know. This is the condition that</p> <p>9 it was produced from Whitestone.</p> <p>10 MR. CARBONE: What's the date of the e-mail?</p> <p>11 MR. GILL: March --</p> <p>12 MR. CARBONE: Is it 3-13-18 "Kindly respond to</p> <p>13 the question below"?</p> <p>14 MR. GILL: Correct.</p> <p>15 MR. CARBONE: Thank you.</p> <p>16 BY MR. GILL:</p> <p>17 Q. And you ask Yuanda about the WT-3 system to</p> <p>18 absorb approximately 2.775 inches of deflection or</p> <p>19 vertical movement?</p> <p>20 A. Yeah.</p> <p>21 Q. And if you go forward in time one page,</p> <p>22 Yuanda responded?</p> <p>23 A. Yes.</p> <p>24 Q. And they, in fact, sent design calculations</p>	<p style="text-align: right;">Page 140</p> <p>1 two Yuanda e-mails --</p> <p>2 A. Yes.</p> <p>3 Q. -- you sent an e-mail on March 16th at 8:44,</p> <p>4 20:44 on this, where you ask: "Kindly forward drawing as</p> <p>5 soon as time allows." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And Yuan Yue responds that Yuanda actually</p> <p>8 provided the drawing?</p> <p>9 A. Okay.</p> <p>10 Q. Did Yuanda provide a drawing or not?</p> <p>11 A. Yeah, he did.</p> <p>12 Q. Okay.</p> <p>13 A. I think that I had provided a sketch in</p> <p>14 that -- in the 3-13 e-mail. I'm pretty sure I did.</p> <p>15 Q. Now I'm not going to go through all of the</p> <p>16 rest because -- look, between that date and March 16th,</p> <p>17 2018 through the oldest e-mail on this July there was a</p> <p>18 back and forth between you and Yuanda regarding the</p> <p>19 design and a sketch for the head connection; correct?</p> <p>20 A. It was tough for me to follow what you were</p> <p>21 saying. Would you mind --</p> <p>22 MR. CARBONE: Adam, could you just speak up a</p> <p>23 little bit? I'm having a hard time hearing you. My</p> <p>24 apologies.</p>
<p style="text-align: right;">Page 139</p> <p>1 or design drawings for that?</p> <p>2 MR. CARBONE: Just for clarity, we're talking</p> <p>3 about the e-mail on March 16, 2018 at 2:45?</p> <p>4 MR. GILL: Correct.</p> <p>5 MR. CARBONE: Okay. Thank you.</p> <p>6 BY MR. GILL:</p> <p>7 Q. And the subsequent one which is on the</p> <p>8 preceding page which is March 16th at 10:25 p.m. where</p> <p>9 Yuan Yue says: "Yesterday, in fact has been sent." Do</p> <p>10 you see that?</p> <p>11 MR. CARBONE: The preceding page, yes.</p> <p>12 BY MR. GILL:</p> <p>13 Q. Mr. Dearth, do you see that?</p> <p>14 A. What -- what am I looking at -- looking for?</p> <p>15 Q. Where Yuanda is responding on March 16th to</p> <p>16 your question and providing you drawings.</p> <p>17 A. Yes, I'm here.</p> <p>18 Q. Do you see that?</p> <p>19 A. I see the e-mail, yes.</p> <p>20 Q. Well, Yuanda did, in fact, respond and did,</p> <p>21 in fact, provide the drawings; is that correct?</p> <p>22 A. I think I was the one who provided the</p> <p>23 drawing or sketch. I believe I was the one who did that.</p> <p>24 Q. Well, looking at the bottom of -- between the</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. GILL: No reason to apologize.</p> <p>2 BY MR. GILL:</p> <p>3 Q. So between March 16th, 2018 and the first</p> <p>4 e-mail in this string which is July 20th, 2018 there was</p> <p>5 a back and forth communication, a collaboration I think</p> <p>6 you said, between you and Yuanda regarding the design of</p> <p>7 this head detail; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And as part of that, on July 20th, 2018 Yuan</p> <p>10 Yue informs you that the calculations for that connection</p> <p>11 have been completed; right?</p> <p>12 A. You said July 11th?</p> <p>13 Q. Twentieth. July 20th. It's the first e-mail</p> <p>14 on the top of the first page of Exhibit 13.</p> <p>15 A. First page, yes. Calculation is complete. I</p> <p>16 see that. And it looks like there are CAD files, PDFs</p> <p>17 and also a calculation check.</p> <p>18 Q. Turning to Exhibit 14, for the record,</p> <p>19 Exhibit 13 ended on July 20th, 2018 and that same e-mail</p> <p>20 is on Page -- the middle of Page 4 of this Exhibit 14.</p> <p>21 So the only new e-mails are on Pages 1, 2 and 3 of</p> <p>22 Exhibit 14.</p> <p>23 MR. CARBONE: Could you just explain that?</p> <p>24 Sorry. Going from 13 to 14?</p>

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1 MR. GILL: Looking at 13 -- looking at 14, the  
2 last e-mail at the top of 14 is July 20th, 2018. That  
3 same e-mail is on Page 4 of Exhibit 14.  
4 MR. CARBONE: Okay. So hold on. On  
5 Exhibit -- on the exhibit I have which is Defendant's  
6 Exhibit 14 --  
7 MR. GILL: Yeah. Turn to the fourth page of  
8 14.  
9 MR. CARBONE: Right. Well, I'm counting one,  
10 two, three, four, and there's like a little diagram on  
11 top that puts -- (Zoom interruption).  
12 Is that correct?  
13 MR. GILL: That is correct. The e-mail below  
14 that --  
15 MR. CARBONE: Is the Friday, July 20?  
16 MR. GILL: That's the same e-mail.  
17 MR. CARBONE: July 20 -- well, there's a  
18 different -- am I missing something or is there a  
19 different date and time? The fourth page of Exhibit 14  
20 has an e-mail which is July 20, 2018 at 4:22 a.m. Okay.  
21 MR. GILL: Yeah.  
22 MR. CARBONE: The other one is 7-20-18 which  
23 is obviously the same date but now you have -- it says  
24 8.21.30. Are you saying that's the same time?

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1 MR. GILL: No. I'm saying the content of the  
2 e-mail is the same. These are the documents that  
3 Whitestone produced, so to the extent that there's a  
4 discrepancy, these are Whitestone documents, and I can't  
5 explain why there's a discrepancy in the dates or the  
6 times.  
7 MR. CARBONE: Well, it's also a different --  
8 it's also a different format, okay, because -- I mean if  
9 you want to be -- the words may all be the same words,  
10 but just by looking at it, you know, there's a  
11 different -- a different format. One has seven lines.  
12 One has in excess of seven lines, so -- do you want him  
13 to compare the two and indicate is the narrative the  
14 same?  
15 MR. GILL: No.  
16 MR. CARBONE: Okay.  
17 MR. GILL: I'm representing those are the same  
18 e-mails, and so only the first three pages are different.  
19 MR. CARBONE: I certainly will accept your  
20 representation that the verbiage in one e-mail matches  
21 the verbiage in the second e-mail, but I will not accept  
22 your representation that they're the same e-mail because  
23 they're not. It's a different configuration.  
24 MR. GILL: I understand, and that is the

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1 complaint that we have had of Whitestone's production  
2 since October, so to the extent that you have a complaint  
3 about this production, this is Whitestone's problem and  
4 not mine.  
5 MR. CARBONE: Well, I'm not complaining at all  
6 about the production. Okay. And I'm willing to accept  
7 your representation as that the verbiage is the same.  
8 MR. GILL: Okay.  
9 MR. CARBONE: Okay. I'm just not agreeing  
10 that the e-mails are the same because as I pointed out,  
11 the configuration is different.  
12 MR. GILL: Okay.  
13 MR. CARBONE: Okay. And they're at  
14 different -- you know, there's different notations, and I  
15 don't know if it matters --  
16 MR. GILL: Different notations?  
17 MR. CARBONE: -- but I just point it out.  
18 MR. CARBONE: I'm sorry.  
19 MR. GILL: What is different in the notation?  
20 MR. CARBONE: Notations with respect to time  
21 which I previously stated.  
22 MR. GILL: Okay. Okay.  
23 BY MR. GILL:  
24 Q. What did Whitestone do with the calculations

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1 that Yuanda provided on July 20th, 2018?  
2 A. We most likely submitted them to the design  
3 team for review.  
4 Q. If you look at the bottom of the third page  
5 of Exhibit 14, it's an e-mail from you dated  
6 September 14th, 2018. Please read it to yourself.  
7 Actually --  
8 MR. CARBONE: We're on Exhibit 14?  
9 MR. GILL: We're Exhibit 14.  
10 MR. CARBONE: First page at the bottom?  
11 BY MR. GILL:  
12 Q. Actually, I said the third page, but I'm --  
13 this string of e-mails relates to calculations. Is that  
14 the calculations that were in the previous exhibit  
15 regarding the WT-3 head connection?  
16 A. It appears to be that way.  
17 Q. Okay. I was confused because this also  
18 relates to an RFI 1436. Does that relate to the WT-3  
19 head connection?  
20 A. Yes.  
21 Q. Did Sciamme or the architect accept the  
22 structural calculation that Yuanda created for the new  
23 connection to the WT-3 head connection?  
24 A. At this point in time, no. It looks like

<p style="text-align: right;">Page 146</p> <p>1 they had some questions, and there was a subsequent 2 submittal. 3 Q. And that subsequent submittal occurred on 4 August 5th or about August 5th, 2019 or you requested it? 5 Second page, top e-mail. 6 A. Looks like there's an October 3rd, and they 7 sent -- they sent us some calculations on October 8th. 8 Then I asked for stamped calculation on August 5th, yeah. 9 Q. Yuanda provided you calculations on 10 October 8th, 2018; right? 11 MR. CARBONE: Could you just indicate what 12 you're referencing in the document? Because I'm having a 13 hard time following along. 14 BY MR. GILL: 15 Q. Second page, middle e-mail from -- 16 MR. CARBONE: You're on Exhibit 14, second 17 page, October 8, 2018 3:59 e-mail? 18 MR. GILL: Correct. 19 MR. CARBONE: Okay. That's all I'm asking so 20 we could follow, so the record's clear too, Adam. 21 BY MR. GILL: 22 Q. Yuan Yue sent the deponent an e-mail saying: 23 "Please review the adjusted calculations." Is that a 24 revised set of calculations for the head connection?</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yes. 2 Q. And they provided stamped structural 3 calculations for the new design criteria for the head 4 connection; correct? 5 A. Yes. 6 Q. You can skip Exhibit 15 and go to Exhibit 16. 7 You are not copied on this e-mail string which has the 8 top e-mail on the first page of April 27th, 2020 at 3:41 9 p -- a.m. Have you ever seen this e-mail before? 10 A. No. 11 Q. I'm not going to ask you any questions about 12 that e-mail then. 13 Regarding Whitestone's claim for the cost of 14 the WT-3 clerestory against Sciamé, does Whitestone still 15 have a claim or dispute with Sciamé regarding the cost to 16 remediate the clerestory? 17 A. Yes. 18 Q. Is Whitestone currently pursuing its 19 administrative remedies against Sciamé? 20 A. Yes. 21 Q. What is Whitestone doing to pursue those 22 remedies? 23 A. Whitestone is submitting an updated PCO which 24 includes all the -- all the information that is in</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Yes. 2 Q. Okay. Why did it take ten months for 3 Whitestone to respond to Yuanda? 4 A. I'm not sure. 5 Q. But on October -- the top e-mail, second page 6 Exhibit 14, on August 5th, 2019 at 4:29 p.m. you sent 7 Yuanda an e-mail requesting engineer stamped calculations 8 for that head connection; right? 9 A. Yes. 10 Q. And Yuanda provided those engineer stamped 11 calculations; correct? 12 A. Looks like August 7, 2019 Charles sent us the 13 stamped calculations. 14 Q. And those calculations are attached to 15 Exhibit 14 as the last four pages; is that correct? 16 A. Yes. 17 Q. Were those calculations accepted by the 18 design team? 19 A. I don't know if this is the last iteration of 20 the calculations, but eventually they were. I don't know 21 if it was this one exactly, but they were. 22 Q. Under the requirements of the purchase order 23 Yuanda was required to provide stamped structural 24 calculations; correct?</p>	<p style="text-align: right;">Page 149</p> <p>1 Exhibit 17, I believe. Yeah. 2 Q. When is Whitestone submitting that? 3 A. As soon as possible. 4 Q. Between July 2019 and today what has 5 Whitestone done to pursue its remedy against Sciamé? 6 A. Well, we've been involved in a lawsuit, so I 7 guess they're handling the matter. 8 Q. Are there requirements prior to -- do you 9 know if there are requirements prior to doing an action 10 in state court that Whitestone still has to pursue in 11 order to proceed with its lawsuit against Sciamé? 12 A. I don't understand the question. 13 Q. Are there administrative remedies Whitestone 14 still needs to satisfy such as submitting it to the 15 governor's office or another administrative state agency 16 before Sciamé can proceed with its lawsuit -- before 17 Whitestone -- 18 MR. CARBONE: Are you asking him -- 19 BY MR. GILL: 20 Q. -- before Whitestone can proceed with its 21 lawsuit against Sciamé? 22 MR. CARBONE: All right. I'm going to object. 23 You're asking him to be a lawyer with respect to the 24 Whitestone/Sciamé contract. He's not here as a lawyer to</p>

<p style="text-align: right;">Page 150</p> <p>1 give legal opinions.</p> <p>2 MR. GILL: I'm not asking as a -- I'm asking</p> <p>3 where they are in the process of pursuing the dispute</p> <p>4 with Scieme.</p> <p>5 MR. CARBONE: I'll -- I'll be happy to tell</p> <p>6 you, but I don't think this witness is capable of telling</p> <p>7 you at what stage a lawsuit is, and I don't think that's</p> <p>8 part of the education of the witness here to testify with</p> <p>9 respect to legal -- legal postures with respect to</p> <p>10 lawsuits.</p> <p>11 MR. GILL: You understand that Whitestone's</p> <p>12 motion for summary judgment talks extensively about the</p> <p>13 agreement and the requirements Whitestone has with Scieme</p> <p>14 and you understand that Whitestone's motion for summary</p> <p>15 judgment talks maybe not as extensively about its</p> <p>16 administrative remedy that it is pursuing against Scieme,</p> <p>17 so Whitestone has put those issues in play in this</p> <p>18 litigation, and I just want to know what the status is.</p> <p>19 MR. CARBONE: Right, and I'll be happy to tell</p> <p>20 you what the status is. I'm more than happy to give you</p> <p>21 the index number of the state lawsuit. I'm more than</p> <p>22 happy to give you the index number of the appeal, and,</p> <p>23 you know, that will fully explain all of the</p> <p>24 extraordinary efforts Whitestone is taking to pursue the</p>	<p style="text-align: right;">Page 152</p> <p>1 but performed the work anyway?</p> <p>2 A. Yes.</p> <p>3 Q. Is that one of the claims or disputes that</p> <p>4 Whitestone's currently pursuing against Scieme?</p> <p>5 A. Yes.</p> <p>6 Q. If Whitestone's successful in pursuing their</p> <p>7 remedy against Scieme and receives all or some of the</p> <p>8 costs that Whitestone incurred for this remediation, what</p> <p>9 is Whitestone going to do with this pending lawsuit it</p> <p>10 has against Yuanda?</p> <p>11 MR. CARBONE: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I -- I don't know.</p> <p>14 BY MR. GILL:</p> <p>15 Q. If Scieme pays Whitestone \$237,000 for the</p> <p>16 cost to remediate the WT-3 clerestory, what is Yuanda</p> <p>17 gonna do with this lawsuit versus or what is Whitestone</p> <p>18 gonna do with this lawsuit against Yuanda? Is it going</p> <p>19 to continue to pursue the \$237,000 against Yuanda?</p> <p>20 MR. CARBONE: Objection. That's -- that's a</p> <p>21 decision that's going to be made by the people at the</p> <p>22 corporation. This is the assistant project manager.</p> <p>23 He's not going to be able to answer, and I'm not even</p> <p>24 sure Whitestone has that answer regardless.</p>
<p style="text-align: right;">Page 151</p> <p>1 alternative dispute resolution procedures in the</p> <p>2 Whitestone/Scieme contract, but I don't think it's fair</p> <p>3 to expect this witness to know all those ins and outs.</p> <p>4 MR. GILL: One second, please.</p> <p>5 BY MR. GILL:</p> <p>6 Q. As part of Whitestone's work for Scieme, are</p> <p>7 you -- do you have any familiarity -- are you aware of</p> <p>8 any requirement that Whitestone perform work under</p> <p>9 protest if it disagreed with Scieme regarding certain</p> <p>10 work?</p> <p>11 A. Can you explain the meaning of your question?</p> <p>12 I don't quite understand.</p> <p>13 Q. Yes, I will. I will rephrase or -- are you</p> <p>14 aware whether Whitestone was required to perform work at</p> <p>15 Whitestone's cost if it disagreed with Scieme regarding</p> <p>16 Scieme's determination whether work was properly</p> <p>17 performed or not?</p> <p>18 A. Yes.</p> <p>19 Q. Yes, Whitestone was required to continue and</p> <p>20 perform work?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is -- did Whitestone perform the</p> <p>23 remedial work on the WT-3 clerestory under that</p> <p>24 provision, meaning that Whitestone disagreed with Scieme</p>	<p style="text-align: right;">Page 153</p> <p>1</p> <p>2 BY MR. GILL:</p> <p>3 Q. Do you have an answer?</p> <p>4 A. Me?</p> <p>5 Q. Yes.</p> <p>6 A. Yeah, I don't know.</p> <p>7 Q. Okay. I'm going to ask some questions about</p> <p>8 Whitestone's damages, and when we discussed the rider,</p> <p>9 you said that you are able to answer questions about the</p> <p>10 damages; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. You can look at Exhibit 17.</p> <p>13 A. I'm here.</p> <p>14 Q. Okay. Does this -- the supporting</p> <p>15 documentation from WCC5617 through WCC5685, is this all</p> <p>16 the supporting documentation for Whitestone's damages?</p> <p>17 A. I believe so.</p> <p>18 Q. Okay. If you could also turn to Exhibit 19</p> <p>19 which is very similar to the first four pages of 17.</p> <p>20 MR. CARBONE: Let me -- let me give that to</p> <p>21 him, okay, Adam?</p> <p>22 MR. GILL: Okay. I thought he already had it.</p> <p>23 Okay.</p> <p>24 THE WITNESS: Thank you. Okay.</p>

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1 BY MR. GILL:

2 Q. So if you look at -- compare 17 and 19,

3 that they have the same information, the same line items,

4 the same dollar amounts; correct?

5 A. Yeah, it appears to be the same.

6 Q. Okay. And if you look at Page 2 of 17 and 2

7 of 19, the only difference -- well, the formatting is

8 different, but down to the manpower tracking, Tuesday,

9 September 15th, 2020, the documents are the same except

10 that the chart to the right contains an additional line

11 for supervisor 261 hours, \$110 an hour. Do you see that?

12 A. Yes.

13 Q. Okay. And if you look at Page 3 of 17 and 4

14 of 19, those pages contain the same information, same

15 dollar amounts?

16 MR. CARBONE: Adam, there's a change -- there

17 is a change that you missed. I believe it carries over.

18 If you go back to the first page --

19 MR. GILL: Yeah.

20 MR. CARBONE: -- and go to the columns let's

21 call them all the way to the right.

22 MR. GILL: Yeah.

23 MR. CARBONE: In Defendant's 17 the last

24 column says roofer, roofer hours, notes. There was a

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1 column added for WC supervisor.

2 MR. GILL: Yeah, that's what I said. I

3 thought I commented that, didn't I?

4 MR. CARBONE: I thought you were referring to

5 the box.

6 MR. GILL: No. No. No. No. To the -- I was

7 referring to the -- oh, I see exactly where you're

8 referring. Okay. Yeah.

9 MR. CARBONE: Okay?

10 MR. GILL: Yes.

11 MR. CARBONE: Yeah, I wanted to make sure you

12 got both of them and not just one of them. There are two

13 changes.

14 MR. GILL: I understand.

15 MR. CARBONE: Okay.

16 MR. GILL: Thank you for that -- bringing that

17 to my attention.

18 BY MR. GILL:

19 Q. So I'm going to refer mainly to Exhibit 17

20 and then occasionally to Exhibit 19. Looking at the box

21 on Page 2 of 17 or 2 of 19, I'm not going to talk about

22 the supervisor, but can you explain what that box is?

23 A. It's manpower summary.

24 Q. Okay. What does rate mean?

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1 A. The hourly rate in which we pay the employee.

2 Q. And that includes fringe benefits?

3 A. I believe so.

4 Q. What does hours refer to?

5 A. How many hours they worked.

6 Q. And the cumulative hours for a carpenter is

7 568?

8 A. Yes.

9 Q. And these hours for the carpenter, laborer,

10 iron worker, PCC and roofer are reflected in the time and

11 material reports that are attached to this; is that

12 accurate?

13 A. Yes.

14 Q. The time and material reports are at page

15 WCC5661 through WCC5685?

16 A. Okay.

17 Q. Do you see in the lower left-hand corner

18 there's a place for a signature of a Whitestone

19 representative? What was the purpose of a Whitestone

20 representative signing these time and material tickets?

21 A. The purpose of us signing this piece of paper

22 is to attest that these are the men and the hours they

23 worked and the material used. It's also cosigned by the

24 construction manager's representative.

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1 Q. If you turn to the last page in this exhibit,

2 WCC5685, it is a time and material ticket dated

3 September 28th, 2020?

4 A. Yes.

5 Q. Is that the last date that Whitestone

6 performed any remedial work for the WC-3 clerestory?

7 A. Yes. It says it in the description "last day

8 of clerestory remediation."

9 Q. Are there any costs except rental costs that

10 Whitestone would have incurred after that date?

11 MR. CARBONE: Can you just repeat that, Adam?

12 I'm sorry. Any costs? What kind of costs?

13 BY MR. GILL:

14 Q. Any kind of rental costs that were not paid

15 in advance. Did Whitestone incur any costs after

16 September 28th, 2020 for the remediation?

17 A. For equipment rental you're saying?

18 Q. Any costs at all except for equipment rentals

19 that were paid later. Did Whitestone incur any costs

20 after that date?

21 A. Not sure.

22 Q. When was the last date Whitestone incurred

23 any costs with respect to the remediation of the WT-3

24 clerestory?



<p style="text-align: right;">Page 158</p> <p>1 A. To the best of my knowledge, it would be this</p> <p>2 26th day. All the rental termination -- all the rental</p> <p>3 agreements were terminated. We had ordered all the</p> <p>4 material, and there was no more manpower on site.</p> <p>5 Q. Okay. Referring to the supervisor line item</p> <p>6 in Exhibit 19, why was -- Strike that.</p> <p>7 Who is that supervisor?</p> <p>8 A. Me.</p> <p>9 Q. What role did you take in -- during the</p> <p>10 remediation process?</p> <p>11 A. General supervisor role. I was on site for</p> <p>12 all late hours. I was overseeing the work making sure it</p> <p>13 complied with the construction documents, the new</p> <p>14 construction documents that Yuanda provided, ordering</p> <p>15 materials, bringing materials to site, overseeing safety</p> <p>16 protocols, fielding questions from special inspectors.</p> <p>17 That's about all I could think of right now.</p> <p>18 Q. That chart in the manpower summary on -- in</p> <p>19 Exhibit 19 says you spent 261 hours for the remediation</p> <p>20 project?</p> <p>21 A. Yeah.</p> <p>22 Q. Does Whitestone have any documents to support</p> <p>23 that claim of 261 hours?</p> <p>24 A. I believe so.</p>	<p style="text-align: right;">Page 160</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Does Whitestone employ any structural</p> <p>4 engineers?</p> <p>5 A. No.</p> <p>6 Q. Who performed this design work on behalf of</p> <p>7 Whitestone?</p> <p>8 A. I did.</p> <p>9 Q. What did you do for 160 hours for this</p> <p>10 design?</p> <p>11 A. CAD drawings.</p> <p>12 Q. Didn't the -- Perkins Eastman provide CAD</p> <p>13 drawings with ASK 266?</p> <p>14 A. No.</p> <p>15 Q. Didn't Yuanda provide CAD drawings when you</p> <p>16 requested them to in 2018?</p> <p>17 A. Yes.</p> <p>18 Q. Why did you produce CAD drawings?</p> <p>19 A. As I said before, it was a working session</p> <p>20 between Yuanda and myself. We would go back and forth</p> <p>21 with different design concepts, and we eventually came up</p> <p>22 with the final remediation, and it's probably a</p> <p>23 conservative estimate of my time.</p> <p>24 Q. Do you have any documents to support the</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Is there a reason those haven't been</p> <p>2 produced?</p> <p>3 A. No, there's no reason.</p> <p>4 Q. Okay. You said this project took 26 days.</p> <p>5 That's -- the time and material ticket says it's the 26th</p> <p>6 day; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Twenty-six 8-hour days is 208 hours. What</p> <p>9 accounts for the additional 53 hours?</p> <p>10 A. I'm not sure. This is just a tracking</p> <p>11 spreadsheet that I created. Everything is formulated and</p> <p>12 tabulated and put the values in and this is what came</p> <p>13 out.</p> <p>14 Q. Do you have supporting documentation for</p> <p>15 those hours?</p> <p>16 A. For all the hours shown here, like the</p> <p>17 carpenters and UCCs and that?</p> <p>18 Q. For your hours.</p> <p>19 A. I -- they're not here. I -- I guess I didn't</p> <p>20 provide them.</p> <p>21 Q. Looking at Page 1 of Exhibit 17 --</p> <p>22 A. Um-hum.</p> <p>23 Q. -- for item 2 Whitestone is seeking costs of</p> <p>24 about \$17,000 for Whitestone design time. Do you see</p>	<p style="text-align: right;">Page 161</p> <p>1 hours that you're claiming here?</p> <p>2 A. I don't have them here.</p> <p>3 Q. Okay. Is there a reason you didn't ask</p> <p>4 Yuanda to do that design work all on its own?</p> <p>5 A. No. I just wanted to help the situation and</p> <p>6 decided to do it with them.</p> <p>7 Q. That design work or your collaboration with</p> <p>8 Yuanda, that -- you wouldn't consider that overhead,</p> <p>9 would you?</p> <p>10 A. I'm not sure.</p> <p>11 Q. What is overhead?</p> <p>12 A. Overhead is like operating costs, electrical</p> <p>13 bill, office employees' salary, paper for the copy</p> <p>14 machine, stuff like that.</p> <p>15 Q. Support staff?</p> <p>16 A. Yeah.</p> <p>17 Q. Are estimators overhead?</p> <p>18 A. I'm not sure.</p> <p>19 Q. If you look at the third page of Exhibit</p> <p>20 17 -- let me back up. Let me withdraw that question, ask</p> <p>21 another question.</p> <p>22 You said you created the manpower tracking</p> <p>23 that is in Page 2 of 17 and 2 and 3 of 19; is that</p> <p>24 accurate?</p>



<p style="text-align: right;">Page 162</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Who created Page 1 of 17?</p> <p>3 A. I did.</p> <p>4 Q. Okay. Who created Page 3 of 17?</p> <p>5 A. I did.</p> <p>6 Q. Okay. On Page 3 of Exhibit 17, are these</p> <p>7 costs that Whitestone incurred for equipment, material</p> <p>8 and services for remediation?</p> <p>9 A. Yes.</p> <p>10 Q. If you look at the line item 1, what is</p> <p>11 DSENY?</p> <p>12 A. They're an engineering firm.</p> <p>13 Q. What kind of engineering firm?</p> <p>14 A. Structural engineer.</p> <p>15 Q. What did they provide to Whitestone with</p> <p>16 respect to the remediation?</p> <p>17 A. Engineering of a site safety plan.</p> <p>18 Q. Scaffolding too; right?</p> <p>19 A. Yes.</p> <p>20 MR. CARBONE: Scaffolding, that's how I</p> <p>21 understood it. So could you clarify so the record is</p> <p>22 clear, please.</p> <p>23 MR. GILL: Yes.</p> <p>24 MR. CARBONE: Thank you.</p>	<p style="text-align: right;">Page 164</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm not entirely sure how to answer that</p> <p>3 question but I'll try. I think the fact that Scieme</p> <p>4 rejected our -- rejected the work, therefore, Whitestone</p> <p>5 rejecting Yuanda's work, required them to provide this by</p> <p>6 our direction.</p> <p>7 BY MR. GILL:</p> <p>8 Q. Okay. What is the basis for you believing</p> <p>9 that they were required to provide this under your</p> <p>10 direction?</p> <p>11 A. Due to the terms of the purchase order</p> <p>12 agreement which -- yeah.</p> <p>13 Q. You believe that the purchase order agreement</p> <p>14 required that Yuanda provide the cost for a site safety</p> <p>15 protocol during remediation?</p> <p>16 MR. CARBONE: That's already asked and</p> <p>17 answered. He's answered that.</p> <p>18 MR. GILL: I just want to make sure I</p> <p>19 understand that that's what his answer is.</p> <p>20 MR. CARBONE: He's answered that question.</p> <p>21 That was his answer.</p> <p>22 BY MR. GILL:</p> <p>23 Q. Please answer.</p> <p>24 A. Would you mind just saying it one more time</p>
<p style="text-align: right;">Page 163</p> <p>1 BY MR. GILL:</p> <p>2 Q. DSENY provided engineering services for a</p> <p>3 site safety program for the remediation; is that</p> <p>4 accurate?</p> <p>5 A. Yes.</p> <p>6 Q. And they provided engineering services for</p> <p>7 scaffolding; is that correct, or a working platform I</p> <p>8 think you said?</p> <p>9 A. Yeah, a work platform, yes.</p> <p>10 Q. Okay. Under the terms of the purchase order</p> <p>11 was Yuanda required to provide engineering services for a</p> <p>12 working platform?</p> <p>13 A. I don't think so.</p> <p>14 Q. Under the terms of the purchase order was</p> <p>15 Yuanda responsible for providing any site safety program?</p> <p>16 MR. CARBONE: I'm going to object. Objection.</p> <p>17 You have to ask him -- the basis of my objection is time.</p> <p>18 When?</p> <p>19 BY MR. GILL:</p> <p>20 Q. Under the terms of the purchase order was</p> <p>21 Yuanda at any time responsible for providing a site</p> <p>22 safety program?</p> <p>23 MR. CARBONE: Objection.</p> <p>24</p>	<p style="text-align: right;">Page 165</p> <p>1 so --</p> <p>2 Q. It is your understanding I believe that under</p> <p>3 the terms of the purchase order agreement Yuanda was</p> <p>4 required to provide -- required to provide for the cost</p> <p>5 for a site safety program during remediation?</p> <p>6 A. One second. Yes, I do because -- since the</p> <p>7 work was rejected by Scieme and Whitestone, therefore,</p> <p>8 passed on the rejection to Yuanda, in some way it</p> <p>9 modifies this PO because it's determined as defective</p> <p>10 work, so yes, they would have to do it because it's all</p> <p>11 encompassing under the defective work. That's my -- my</p> <p>12 answer.</p> <p>13 Q. Your prior answer you said that Scieme</p> <p>14 rejected the work and then you went on and said</p> <p>15 Whitestone rejected the work, but to be clear, Whitestone</p> <p>16 never rejected Yuanda's work; right?</p> <p>17 MR. CARBONE: Objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. The word rejected was not in -- if you're</p> <p>20 referring to that letter, the word rejection was never</p> <p>21 said, but because the owner rejected it, we were using</p> <p>22 our PO -- the agreement in our PO; thus, rejecting their</p> <p>23 work, if that makes sense.</p> <p>24</p>

<p style="text-align: right;">Page 166</p> <p>1 BY MR. GILL:</p> <p>2 Q. I understand what you're saying. I just want</p> <p>3 to clarify it because your earlier -- what you just said</p> <p>4 contradicts your earlier testimony, and I just want to</p> <p>5 make sure that I understand Whitestone's position.</p> <p>6 Whitestone never rejected Yuanda's work. They were just</p> <p>7 passing through Sciamé's rejection; is that correct?</p> <p>8 MR. CARBONE: Objection. Document speaks for</p> <p>9 itself, but he can answer that question.</p> <p>10 BY THE WITNESS:</p> <p>11 A. And would you mind saying that one more time,</p> <p>12 sir, please.</p> <p>13 BY MR. GILL:</p> <p>14 Q. I'm not asking about the document. I'm</p> <p>15 asking about Whitestone's actions during -- regarding the</p> <p>16 rejection. It's my understanding based on your testimony</p> <p>17 throughout today that Whitestone itself did not reject</p> <p>18 Yuanda's work but Whitestone was passing through to</p> <p>19 Yuanda Sciamé's rejection of that work?</p> <p>20 A. Yeah, I just want it to be clear that the</p> <p>21 letter did not say that Whitestone rejected the work, but</p> <p>22 because the owner rejected the work, we directed them to</p> <p>23 remediate the work, which I think overall is us rejecting</p> <p>24 the work.</p>	<p style="text-align: right;">Page 168</p> <p>1 the letter.</p> <p>2 MR. GILL: Okay.</p> <p>3 BY MR. GILL:</p> <p>4 Q. Do you know of any other time other than that</p> <p>5 letter when Whitestone rejected Yuanda's work?</p> <p>6 A. I'm not aware of any other time.</p> <p>7 Q. Under the terms -- Strike that.</p> <p>8 Under the definition of vendor's work as</p> <p>9 defined in the purchase order was Yuanda required to</p> <p>10 provide insulation to the project?</p> <p>11 MR. CARBONE: Can we refer to the -- could he</p> <p>12 look at the purchase order?</p> <p>13 MR. GILL: Sure. I absolutely -- yes, please</p> <p>14 do look at the purchase order.</p> <p>15 MR. CARBONE: That's --</p> <p>16 MR. GILL: Which is Exhibit 4.</p> <p>17 MR. CARBONE: Exhibit 4.</p> <p>18 MR. GILL: Yeah. The definition of vendor</p> <p>19 work we looked at before. It's on Page 1.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Can you add context to the question?</p> <p>22 BY MR. GILL:</p> <p>23 Q. What do you need clarified or put in context?</p> <p>24 A. I think insulation. Yuanda installed</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Did you ever -- did Whitestone ever inform</p> <p>2 Yuanda that Whitestone was rejecting the work rather than</p> <p>3 just operating as a pass-through?</p> <p>4 MR. CARBONE: I'm going to object to the form</p> <p>5 because you're -- I'm just -- I'm objecting. He could</p> <p>6 answer the question, but there's a letter.</p> <p>7 MR. GILL: I understand.</p> <p>8 BY MR. GILL:</p> <p>9 Q. I'm asking at any time, at any time in the</p> <p>10 last four years did Whitestone inform Yuanda that</p> <p>11 Whitestone itself was rejecting Yuanda's work.</p> <p>12 MR. CARBONE: And the witness just answered</p> <p>13 that question and it referred to Grzic's June letter that</p> <p>14 was previously marked, so he's already asked -- answered</p> <p>15 your question. You're asking again and again.</p> <p>16 MR. GILL: He's answering -- let me address</p> <p>17 your attorney before answering. He keeps -- you're</p> <p>18 right. He keeps referring to the letter. I'm not</p> <p>19 referring to that letter. I want to know if at any time,</p> <p>20 including the letter, outside the letter, at any time in</p> <p>21 the last four years whether Whitestone informed Yuanda</p> <p>22 that Whitestone rejected Yuanda's work.</p> <p>23 MR. CARBONE: And he -- you've asked him that</p> <p>24 twice, and he's answered it twice, and he's referring to</p>	<p style="text-align: right;">Page 169</p> <p>1 insulation in their curtainwall before they installed.</p> <p>2 Are you referring to insulation from the work platform?</p> <p>3 Is that what you're after?</p> <p>4 Q. Is that what this insulation is for?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. They were required to provide</p> <p>7 insulation for a work platform under the definition of</p> <p>8 vendor's work?</p> <p>9 A. Well, I think I -- I think it goes back to</p> <p>10 what I was saying before because the owner rejected the</p> <p>11 work. Therefore, Whitestone rejected the work. Yuanda's</p> <p>12 compelled to do this work. In order to perform this</p> <p>13 work, there needs to be roof protection which insulation</p> <p>14 was used for. That's my best attempt at answering the</p> <p>15 question.</p> <p>16 Q. So it's -- and, again, I'm just trying to</p> <p>17 understand. It's your testimony that the rejection</p> <p>18 changed the type of work that Yuanda was required to</p> <p>19 provide under the purchase order?</p> <p>20 MR. CARBONE: Objection.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Is there a different way of asking that?</p> <p>23 Because I don't really quite understand.</p> <p>24</p>

<p style="text-align: right;">Page 170</p> <p>1 BY MR. GILL:</p> <p>2 Q. Okay. I will try and ask a different way.</p> <p>3 My understanding from your testimony that it's</p> <p>4 Whitestone's position that the rejection by Sciamme of the</p> <p>5 installed clerestory in some way altered the work that</p> <p>6 Yuanda was required to provide to Whitestone?</p> <p>7 MR. CARBONE: Objection. The purchase order</p> <p>8 has the scope.</p> <p>9 MR. GILL: Yes.</p> <p>10 MR. CARBONE: And with respect to timing,</p> <p>11 there -- there's -- the purchase order's the purchase</p> <p>12 order. My objection is the purchase order is the</p> <p>13 purchase order. Whatever the purchase order says they</p> <p>14 had to provide.</p> <p>15 MR. GILL: Yes.</p> <p>16 MR. CARBONE: Right. There was some original</p> <p>17 work and then there was remedial work --</p> <p>18 MR. GILL: Okay.</p> <p>19 MR. CARBONE: -- so that didn't change.</p> <p>20 That's the -- that's the basis of my objection.</p> <p>21 MR. GILL: Okay.</p> <p>22 BY MR. GILL:</p> <p>23 Q. Can you answer the question, please.</p> <p>24 A. He did a better job of explaining it than I</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. CARBONE: James, why don't you read that</p> <p>2 section Inspection of Defective Work and try to respond</p> <p>3 to attorney's answer, please. Is that okay with you,</p> <p>4 Adam?</p> <p>5 MR. GILL: Sure. Like I said before, I want</p> <p>6 the best answer that Yuanda or that Whitestone can give,</p> <p>7 Mr. Dearth can give.</p> <p>8 MR. CARBONE: Okay. James, read Defendant's</p> <p>9 Exhibit 4, Page 01105 where it talks about inspection of</p> <p>10 defective work because I think that's what Mr. Gill is</p> <p>11 honing in on.</p> <p>12 THE WITNESS: Okay.</p> <p>13 (Witness peruses document.)</p> <p>14 I'm just going to need another minute,</p> <p>15 please.</p> <p>16 MR. GILL: Take your time.</p> <p>17 (Witness peruses document.)</p> <p>18 BY THE WITNESS:</p> <p>19 A. I think this might be it. "Upon approval of</p> <p>20 the vendor's plan by the subcontractor, vendor shall</p> <p>21 promptly replace or correct any of the vendor's work. If</p> <p>22 the vendor does not -- does not do so within a reasonable</p> <p>23 time, subcontractor shall have the right to do so and the</p> <p>24 vendor shall be liable to the subcontractor for the costs</p>
<p style="text-align: right;">Page 171</p> <p>1 could. Forgive me if I'm saying the same thing over and</p> <p>2 over again, but I feel that because the owner declared it</p> <p>3 defective, therefore, Whitestone declared it defective.</p> <p>4 Compelled them to do everything in their power at a cost</p> <p>5 to them to complete the remedial work. That's -- that's</p> <p>6 the best way I can answer.</p> <p>7 Q. Okay. Where in the purchase order agreement</p> <p>8 does it say that Yuanda has to provide tools or</p> <p>9 scaffolding or engineering services when it is required</p> <p>10 to do remedial work?</p> <p>11 A. You said where does it say that?</p> <p>12 Q. Yes.</p> <p>13 A. I'm not sure, but where doesn't it say that?</p> <p>14 I don't want to ask a question with a question, but, you</p> <p>15 know, it's -- I don't know.</p> <p>16 Q. Whitestone is the one who is making the</p> <p>17 contention that Yuanda is responsible for all of these</p> <p>18 costs, and I want to know where in the purchase order it</p> <p>19 says that Yuanda is responsible for these costs.</p> <p>20 A. It might say inspections in defective work.</p> <p>21 I don't know.</p> <p>22 Q. Okay. Looking at --</p> <p>23 A. It could also be in a different place as</p> <p>24 well. I don't really know.</p>	<p style="text-align: right;">Page 173</p> <p>1 thereof." Unless I'm not interpreting that correctly, I</p> <p>2 think that's pretty close to what I'm saying.</p> <p>3 BY MR. GILL:</p> <p>4 Q. That is what your attorney said, and what you</p> <p>5 read is exactly what I was pointing to or thinking about.</p> <p>6 I didn't know if there was another section of this that</p> <p>7 refers to what is Yuanda's obligation. You see in what</p> <p>8 you just read Vendor's Work is capitalized; yes?</p> <p>9 MR. CARBONE: We'll stipulate to that. It's</p> <p>10 capitalized.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Okay.</p> <p>13 MR. GILL: I just want him to see that it's</p> <p>14 capitalized because then I'm going to ask other</p> <p>15 questions.</p> <p>16 BY MR. GILL:</p> <p>17 Q. Do you see on the first page Vendor's Work is</p> <p>18 defined and capitalized?</p> <p>19 A. Okay.</p> <p>20 Q. And Vendor's Work on the first page as</p> <p>21 defined does not include engineering services for a work</p> <p>22 platform, does it?</p> <p>23 A. Not specifically.</p> <p>24 MR. CARBONE: What are you referring to, if</p>

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1 you would, Adam?

2 MR. GILL: The first page of the exhibit.

3 It's the large paragraph in the middle. It starts with:

4 "Yuanda USA Corporation," and goes on for about

5 two-thirds of that and then there's a ("Vendor's Work").

6 And I'm asking whether the preceding ten lines include or

7 require that Yuanda provide engineering services for a

8 work platform.

9 MR. CARBONE: Engineering services for what?

10 MR. GILL: For a work platform.

11 MR. CARBONE: I'm going to object.

12 BY MR. GILL:

13 Q. Mr. Dearth, can you answer?

14 A. Well, in my opinion, I don't see any specific

15 language here. But like I said before at the beginning,

16 you asked me about this document, and I didn't feel

17 comfortable interpreting it because I didn't know what

18 the rest of it says. I could for this very reason.

19 (Witness mumbles). Vendor shall be liable to the

20 subcontractor for the costs thereof.

21 THE REPORTER: Excuse me. Excuse me. He

22 keeps breaking up. I don't know. Are you having trouble

23 hearing him too?

24 BY MR. GILL:

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1 Q. I can't hear you. Where are you reading

2 from?

3 A. Inspection and defective work. You want me

4 to start over?

5 MR. CARBONE: Sure.

6 THE REPORTER: I couldn't understand you at

7 all. You kept breaking up.

8 THE WITNESS: Sorry.

9 BY THE WITNESS:

10 A. All right. Pretty much -- you asked me about

11 Exhibit 4 in the beginning of this section, and I had

12 mentioned that, you know, I didn't feel comfortable

13 interpreting this --

14 THE REPORTER: Now I can't hear. Your voice

15 is dropping off completely. There's no sound. I don't

16 know if you're pulling it too far.

17 THE WITNESS: Can you hear me now?

18 THE REPORTER: Little better.

19 MR. GILL: Yeah.

20 BY THE WITNESS:

21 A. Okay. All right. So you asked me about

22 Exhibit 4 in the beginning of this section, and I told

23 you that I didn't feel comfortable interpreting this not

24 only because I don't know the language used but also I

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1 haven't really seen this document and I haven't reviewed

2 it in depth. However, I did mention that I didn't know

3 if anything in the back of this document supersedes any

4 of the language in the front of it, and I think that's

5 relevant to the question that you're asking now because

6 when I read from 107 -- oh, I'm sorry. I lost my track.

7 Hold on one second. If I read from 105, Inspection of

8 Defective Work, "vendor shall be liable to the

9 subcontractor for the costs thereof," and I think that

10 includes all costs required to complete the remedial work

11 including protection of adjacent finishes and whatever's

12 needed to complete that work. That's my interpretation

13 of it.

14 BY MR. GILL:

15 Q. Okay.

16 A. That's my best attempt at answering the

17 question.

18 Q. And honestly that's all I want, and I said

19 that before, and I'm being honest when I say that.

20 A. Okay.

21 Q. It helps your attorney. It helps me to know

22 what is Yuanda's position or Whitestone's position.

23 A. Yeah, I think that's -- that's it.

24 Q. Okay. If you can again -- Exhibit 17.

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1 MR. CARBONE: Can we take a five-minute break,

2 please.

3 MR. GILL: Five, yeah.

4 MR. CARBONE: Thank you.

5 THE VIDEOGRAPHER: Off the record, 15:30.

6 (WHEREUPON, a break was

7 taken.)

8 Back on the record, 15:35.

9 BY MR. GILL:

10 Q. Okay. If you can look at in Exhibit 17 5633,

11 sorry, 5634. What is this document?

12 A. This is a Whitestone purchase --

13 THE REPORTER: I'm sorry.

14 MR. GILL: Sorry.

15 THE REPORTER: I'm sorry. Your sound again.

16 This is a?

17 BY THE WITNESS:

18 A. Whitestone purchase order.

19 BY MR. GILL:

20 Q. Issued to who?

21 A. Issued to AJBBC Corporation.

22 THE VIDEOGRAPHER: The echoing is really bad.

23 MR. GILL: Yeah.

24 THE WITNESS: Is it better now?

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1 MR. GILL: Yeah.

2 BY MR. GILL:

3 Q. Okay. So you said AJBBC Corporation; right?

4 A. Yes.

5 Q. Okay. And it says it's for steel brackets?

6 A. Yes.

7 Q. Are these steel brackets for the newly

8 designed connection between the head of the WT-3

9 clerestory and the building structure?

10 A. Yes.

11 Q. And this was a purchase order issued by --

12 well, your name is on the bottom right. Did you issue

13 this or did someone else?

14 A. Someone else in the company created it, but

15 I'm the one who told them to create it.

16 Q. Okay. Was this actually sent to AJBBC?

17 A. Yes.

18 Q. You can turn back one page to 5633. What is

19 this document?

20 A. This is Portland Steel. AJBBC Corp. and

21 Portland Steel are one in the -- it's the same company.

22 Different name but same guy.

23 Q. Thank you. That explains a bunch of my next

24 questions about what the difference is.

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1 So was there any purchase order or anything

2 between the purchase order 5634 and the invoice 5633?

3 A. What did you say? Is there a difference

4 between them?

5 Q. Was there -- no. No. Was there ever

6 communication between you or was there a subsequent

7 purchase order or was there anything else sent to either

8 Portland Steel or AJB for these connections?

9 A. Yes.

10 Q. What was -- what happened between the two

11 documents between Whitestone and Portland Steel or AJB?

12 A. Can you explain the meaning?

13 Q. Well, I said was there anything that occurred

14 or a subsequent purchase order, and you said yes, there

15 was. So was there a different purchase order or is this

16 one that's 5634 the only, one and only for these

17 brackets?

18 A. I'm pretty sure that this is the one and

19 only, and then this was the final invoice date.

20 Q. Got it. Can you describe the process of

21 ordering these brackets from either AJB or Portland

22 Steel?

23 A. I sent them the fabrication drawings and they

24 made them.

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1 Q. The purchase order is dated February 20th,

2 2018. Do you see that?

3 A. Yes.

4 Q. And that's when you ordered the brackets?

5 A. Yes.

6 Q. Why didn't you ask Yuanda to make the

7 brackets in 2018?

8 A. I think I might have.

9 Q. Did they say no?

10 A. No. They gave me a -- I think they gave me a

11 proposal to do it and ship it in the air or ocean.

12 Q. So why did Whitestone or you issue this

13 purchase order in February 2018?

14 A. From what I recall, I think it's because of

15 how long it would take for the material to ship from

16 Yuanda to the job.

17 Q. And when Yuanda gave you its proposal, was it

18 going to -- was Yuanda going to provide the brackets at

19 its cost?

20 A. Maybe. I can't recall whether it's yes or no

21 but maybe.

22 Q. Early on -- earlier on today I asked about

23 warranty work, and I think I asked about it a couple of

24 times, and you were -- you said, I believe you said this

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1 was not warranty work because the design criteria

2 changed; is that accurate?

3 MR. CARBONE: I'm going to object. I don't

4 think that's his testimony.

5 BY THE WITNESS:

6 A. I -- I don't recall.

7 BY MR. GILL:

8 Q. Okay. Was this installation of the brackets

9 considered -- did Whitestone consider the installation of

10 the new brackets warranty work?

11 A. I'm not sure.

12 Q. Do you know if Sciamé considered it warranty

13 work?

14 A. I believe they considered it defective work.

15 Q. And that it would be -- since it was

16 defective work, Whitestone had to replace it at

17 Whitestone's cost or the cost of its -- Whitestone's

18 subcontractor?

19 A. I believe so, yes.

20 Q. If you turn to the first page of Exhibit 17,

21 Whitestone is making the demand that Yuanda pay

22 Whitestone \$33,563.12 for overhead and profit. Why does

23 Whitestone get to receive a profit for this alleged

24 defective work?



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1 A. I believe the overhead is certainly something  
 2 that would be a cost, but I'm unsure about the profit.  
 3 This is our company policy.  
 4 Q. You're sure that -- Sorry. I stepped on your  
 5 answer.  
 6 You're sure that the overhead is compensable.  
 7 Why are you sure of that?  
 8 MR. CARBONE: I didn't hear you.  
 9 MR. GILL: I believe the prior answer was that  
 10 he was sure that the overhead would be compensable, and I  
 11 just want to know why he is sure that the overhead would  
 12 be something that Whitestone can receive as a damage from  
 13 Yuanda.  
 14 BY THE WITNESS:  
 15 A. Well, I mean someone had to pay for the  
 16 lights to be on. Someone had to pay for the auto CAD  
 17 licenses.  
 18 MR. CARBONE: You have to speak up.  
 19 THE WITNESS: Can you guys hear me?  
 20 MR. GILL: Yeah. Yeah, I can hear you.  
 21 BY THE WITNESS:  
 22 A. You know, someone had to pay to keep the  
 23 lights on. Someone had to pay the cleaning person to  
 24 clean the office. Someone had to pay the internet fees.

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1 You know, that's all part of overhead and profit -- I  
 2 mean overhead.  
 3 BY MR. GILL:  
 4 Q. I understand, but why is Yuanda liable to  
 5 Whitestone for those overhead charges for -- to correct  
 6 defective work?  
 7 A. I've gotta think about it for a second.  
 8 (Brief pause.)  
 9 My best answer would be I believe we're  
 10 entitled to overhead because all of the time that we  
 11 could have spent -- all the overhead funds, if you will,  
 12 that could have been allocated to another project or a  
 13 different scope was allocated to this issue which was not  
 14 a Whitestone issue.  
 15 Q. It wasn't a Yuanda issue either though;  
 16 right?  
 17 MR. CARBONE: Objection. That's the issue in  
 18 the lawsuit.  
 19 MR. GILL: I didn't hear the objection.  
 20 Sorry.  
 21 MR. CARBONE: I'm sorry. I'm trying to keep  
 22 the reverberation low.  
 23 I said objection. That's the issue in the  
 24 lawsuit. What your statement was wasn't a question. It

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1 was a legal conclusion. I'm objecting to the legal  
 2 conclusion.  
 3 MR. GILL: And I appreciate that. I am asking  
 4 why Yuanda is liable to Whitestone for Whitestone's  
 5 overhead if Yuanda was not responsible for the design  
 6 change.  
 7 MR. CARBONE: And he -- he answered that.  
 8 MR. GILL: No, he didn't.  
 9 MR. CARBONE: I'm not -- I have an objection.  
 10 I'm not stopping him from answering though. He can  
 11 answer it.  
 12 MR. GILL: Please answer it.  
 13 MR. CARBONE: It's asked and answered.  
 14 BY THE WITNESS:  
 15 A. Okay. Could you just repeat it one more  
 16 time? I'll give my best to answer.  
 17 BY MR. GILL:  
 18 Q. As you previously testified, the design  
 19 change was not the result of anything Yuanda did, and  
 20 Sciame rejected Whitestone and Yuanda's work because of  
 21 this design change. Why does Yuanda owe Whitestone  
 22 \$33,000 for overhead?  
 23 MR. CARBONE: Same objection.  
 24 BY THE WITNESS:

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1 A. The reason is we allocated our manpower and  
 2 our resources to this issue. That's why we're entitled  
 3 to it.  
 4 BY MR. GILL:  
 5 Q. Why are you entitled to it from Yuanda?  
 6 A. Because --  
 7 MR. CARBONE: Objection. Go ahead.  
 8 BY THE WITNESS:  
 9 A. Because the owner rejected the work.  
 10 Therefore, we had to reject the work. Yuanda's the one  
 11 who bears the cost for this. That's why we're entitled  
 12 to it. That's my best attempt at answering the question.  
 13 BY MR. GILL:  
 14 Q. Okay. The next line item is insurance charge  
 15 at 18 percent. Did Whitestone purchase a rider or policy  
 16 that was specific to the remediation work?  
 17 A. I don't know.  
 18 Q. Is that 18 percent a standard Whitestone  
 19 general condition cost it includes on all projects?  
 20 A. I'm not aware.  
 21 Q. How did you determine --  
 22 A. I don't know.  
 23 Q. -- that Yuanda owes Whitestone 18 percent of  
 24 all of the above costs for insurance?



<p style="text-align: right;">Page 186</p> <p>1 A. I was told to put that number on.</p> <p>2 Q. Told by whom?</p> <p>3 A. I'm not entirely sure who, but I was told to</p> <p>4 put an insurance cost of 18 percent.</p> <p>5 Q. Was a reason given to you when you were told</p> <p>6 to put the 18 percent down?</p> <p>7 A. Just to account for insurance.</p> <p>8 Q. Is that 18 percent related in any way to an</p> <p>9 actual cost incurred for the remediation project?</p> <p>10 A. I don't know. I don't really know too much</p> <p>11 about insurance to be honest with you. All I know is I</p> <p>12 was told to put 18 percent, and that's what I did.</p> <p>13 Q. I want to do one follow-up question actually.</p> <p>14 Your -- the design work was 8 hours, 20 days for 160</p> <p>15 hours, and then on the new -- Exhibit 19 it was I</p> <p>16 believe -- your time was 261 hours; is that correct?</p> <p>17 A. For supervisor it's 261, and for the design</p> <p>18 it's 20 days at 8 hours per day.</p> <p>19 Q. Okay. And it's your testimony you spent 421</p> <p>20 hours working exclusively on the remediation?</p> <p>21 A. Yes, if not more.</p> <p>22 Q. If you can look at Exhibit 18.</p> <p>23 A. Okay.</p> <p>24 Q. Have you ever seen this document before?</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Okay. Are you able to testify as the</p> <p>2 representative of Whitestone regarding all of the facts</p> <p>3 stated in this Exhibit 18?</p> <p>4 A. Can I look at something over here for a</p> <p>5 second?</p> <p>6 Q. Yeah. Is it something that I -- before</p> <p>7 looking, is it something that I have shown you today?</p> <p>8 A. Well, we went through a list of all the items</p> <p>9 that I said I could and could not --</p> <p>10 Q. This wasn't on that list. This was not on</p> <p>11 that list. But this is -- this document -- I'll tell</p> <p>12 you, and your attorney will correct me if I'm wrong.</p> <p>13 This is a document Whitestone submitted to the Court of</p> <p>14 Whitestone's statement of undisputed material facts, so</p> <p>15 this comes from -- purportedly comes from Whitestone, and</p> <p>16 I want to know if you are able, if you are a person who</p> <p>17 is able to testify about the facts that are contained in</p> <p>18 here.</p> <p>19 A. I think I would need to review the whole</p> <p>20 thing before honestly saying yes because I haven't really</p> <p>21 seen this before.</p> <p>22 Q. Okay. That's fine.</p> <p>23 MR. CARBONE: Want him to read the document?</p> <p>24 MR. GILL: No.</p>
<p style="text-align: right;">Page 187</p> <p>1 A. I may have seen it yesterday or not last</p> <p>2 Friday but the Friday before but --</p> <p>3 THE REPORTER: I'm -- I'm sorry. Can you</p> <p>4 repeat? The verb is getting bad again.</p> <p>5 MR. GILL: Yeah.</p> <p>6 THE REPORTER: Can you repeat?</p> <p>7 BY MR. GILL:</p> <p>8 Q. What I heard you say you may have seen it</p> <p>9 last Friday or the Friday before but and then you kind of</p> <p>10 cut out.</p> <p>11 A. So I might have seen it yesterday or the</p> <p>12 Friday before last, but the documents kind of all look</p> <p>13 the same to me, these legal documents to be honest.</p> <p>14 Q. Are you able to testify today as a</p> <p>15 representative of Whitestone regarding all of the facts</p> <p>16 that are alleged in this Exhibit 18?</p> <p>17 MR. CARBONE: Could you just repeat that? I'm</p> <p>18 sorry. You have to lean forward.</p> <p>19 THE VIDEOGRAPHER: Hey, you're on mute.</p> <p>20 MR. GILL: No. No. I heard well enough. You</p> <p>21 want me to repeat the question; right?</p> <p>22 MR. CARBONE: Yes. Yes.</p> <p>23</p> <p>24 BY MR. GILL:</p>	<p style="text-align: right;">Page 189</p> <p>1 THE WITNESS: Good.</p> <p>2 MR. GILL: That's all I have of Mr. Dearth.</p> <p>3 I do reserve the remainder of my time for</p> <p>4 and if Whitestone designates anyone else as the corporate</p> <p>5 representative. So I'm done.</p> <p>6 Do you have anything?</p> <p>7 MR. CARBONE: I have no questions.</p> <p>8 MR. GILL: Okay. Reserve signature or waive?</p> <p>9 MR. CARBONE: I'm sorry?</p> <p>10 MR. GILL: Signature on the transcript. Do</p> <p>11 you not do that in -- give the deponent an opportunity to</p> <p>12 review and make corrections?</p> <p>13 MR. CARBONE: Well, yeah, of course we want</p> <p>14 that opportunity.</p> <p>15 MR. GILL: Okay.</p> <p>16 MR. CARBONE: Okay.</p> <p>17 THE VIDEOGRAPHER: This ends today's</p> <p>18 deposition. We're going off the record, 15:53.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">Page 190</p> <p>1                   SIGNATURE:</p> <p>2 It was agreed by and between counsel and the parties that</p> <p>3 the Deponent will read and sign the transcript of said</p> <p>4 deposition.</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 192</p> <p>1                   IN WITNESS WHEREOF, I do hereunto set my hand</p> <p>2 this 3rd day of February, 2021.</p> <p>3</p> <p>4</p> <p>5</p> <p>6 </p> <p>7                   KELLY A. BRICHETTO</p> <p>8                   CSR License No. 84-3252</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 191</p> <p>1 STATE OF ILLINOIS)</p> <p>2 ) SS:</p> <p>3 COUNTY OF C O O K)</p> <p>4                   I, KELLY A. BRICHETTO, a Certified Shorthand</p> <p>5 Reporter of said state, do hereby certify</p> <p>6 that the within named witness, JAMES DEARTH, was by me</p> <p>7 first duly sworn to testify the truth, the whole truth</p> <p>8 and nothing but the truth in the cause aforesaid; that</p> <p>9 the testimony then given by the above-referenced witness</p> <p>10 was by me reduced to stenotype in the presence of said</p> <p>11 witness; afterwards transcribed, and that the foregoing</p> <p>12 is a true and correct transcription of the testimony so</p> <p>13 given by the above-referenced witness.</p> <p>14                   I do further certify that this deposition was</p> <p>15 taken at the time and place in the foregoing caption</p> <p>16 specified and was completed without adjournment.</p> <p>17                   I do further certify that I am not a relative,</p> <p>18 counsel or attorney for either party or otherwise</p> <p>19 interested in the event of this action.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 193</p> <p>1                   Veritext Legal Solutions</p> <p>2                   1100 Superior Ave</p> <p>3                   Suite 1820</p> <p>4                   Cleveland, Ohio 44114</p> <p>5                   Phone: 216-523-1313</p> <p>6                   February 4, 2021</p> <p>7                   To: Mr. Carbone</p> <p>8                   Case Name: Whitestone Construction, Corp. v. Yuanda Usa Corporation</p> <p>9                   Veritext Reference Number: 4420612</p> <p>10                  Witness: James Dearth      Deposition Date: 1/20/2021</p> <p>11                  Dear Sir/Madam:</p> <p>12                  Enclosed please find a deposition transcript. Please have the witness</p> <p>13                  review the transcript and note any changes or corrections on the</p> <p>14                  included errata sheet, indicating the page, line number, change, and</p> <p>15                  the reason for the change. Have the witness' signature notarized and</p> <p>16                  forward the completed page(s) back to us at the Production address</p> <p>17                  shown</p> <p>18                  above, or email to production-midwest@veritext.com.</p> <p>19                  If the errata is not returned within thirty days of your receipt of</p> <p>20                  this letter, the reading and signing will be deemed waived.</p> <p>21                  Sincerely,</p> <p>22                  Production Department</p> <p>23</p> <p>24 NO NOTARY REQUIRED IN CA</p>

Page 194	Page 196
<p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2 ASSIGNMENT REFERENCE NO: 4420612</p> <p>3 CASE NAME: Whitestone Construction, Corp. v. Yuanda Usa Corporation</p> <p>4 DATE OF DEPOSITION: 1/20/2021</p> <p>5 WITNESS' NAME: James Dearth</p> <p>6 In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.</p> <p>7 I have made no changes to the testimony as transcribed by the court reporter.</p> <p>8</p> <p>9 Date James Dearth</p> <p>10 Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:</p> <p>12 They have read the transcript;</p> <p>13 They signed the foregoing Sworn Statement; and</p> <p>14 Their execution of this Statement is of their free act and deed.</p> <p>15 I have affixed my name and official seal</p> <p>16 this _____ day of _____, 20____.</p> <p>17</p> <p>18 Notary Public</p> <p>19 Commission Expiration Date</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ERRATA SHEET</p> <p>2 VERITEXT LEGAL SOLUTIONS MIDWEST</p> <p>3 ASSIGNMENT NO: 4420612</p> <p>3 PAGE/LINE(S) / CHANGE /REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 Date James Dearth</p> <p>21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</p> <p>22 DAY OF _____, 20____.</p> <p>23</p> <p>24 Notary Public</p> <p>25 Commission Expiration Date</p>
<p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2 ASSIGNMENT REFERENCE NO: 4420612</p> <p>3 CASE NAME: Whitestone Construction, Corp. v. Yuanda Usa Corporation</p> <p>4 DATE OF DEPOSITION: 1/20/2021</p> <p>5 WITNESS' NAME: James Dearth</p> <p>6 In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.</p> <p>7 I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).</p> <p>8 I request that these changes be entered as part of the record of my testimony.</p> <p>10</p> <p>11 I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.</p> <p>12</p> <p>13 Date James Dearth</p> <p>14</p> <p>15 Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:</p> <p>17 They have read the transcript;</p> <p>18 They have listed all of their corrections in the appended Errata Sheet;</p> <p>19 They signed the foregoing Sworn Statement; and</p> <p>20 Their execution of this Statement is of their free act and deed.</p> <p>21 I have affixed my name and official seal</p> <p>22 this _____ day of _____, 20____.</p> <p>23</p> <p>24 Notary Public</p> <p>25 Commission Expiration Date</p>	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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